Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1991

UNIVERSAL UNDERWRITERS INSURANCE COMPANY,

Petitioner,

vs.

GERRISH CORPORATION, doing business as Gerrish Motors, doing business as Scrub-a-Dub,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI AND APPENDIX, VOLUME I, PAGES 1-109

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QUESTIONS PRESENTED

I. Can a federal court disregard the notice and hearing provisions of a state insurance regulatory statute, where the statute would be constitutionally infirm without those provisions?

II. Where a state's insurance regulatory statutes require the state to give an insurer notice and an opportunity for hearing if the state intends to withdraw approval of a previously approved policy form, does a federal court order requiring an insurer to amend an insurance contract written on an approved form deprive the insurer of constitutional rights where the state has not notified the insurer that approval of the policy form is withdrawn?

III. Where a federal court finds that an insurance contract unambiguously excludes pollution coverage, can the court nevertheless constitutionally compel the insurer to provide pollution coverage, in the absence of a statute, rule or regulation requiring such coverage?

IV. Can a federal court constitutionally compel an insurer to provide insurance coverage where the state with administrative jurisdiction in the matter would be estopped to require such coverage?

V. Are government mandated environmental response costs "damages" for which coverage is provided under standard general liability insurance policy language?

PARTIES TO THE PROCEEDING

UNIVERSAL UNDERWRITERS INSURANCE COMPANY[1]

Petitioner,

vs.

GERRISH CORPORATION, doing business as Gerrish Motors, doing business as Scrub-a-Dub

Respondent.

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[1] Universal Underwriters is a wholly-owned subsidiary of Maryland Casualty Company, which is a wholly-owned subsidiary of Zurich Insurance Company – U.S. Branch, which in turn is owned by Zurich Insurance Company, Zurich, Switzerland. In addition to several wholly-owned subsidiaries, Universal Underwriters owns a controlling interest in Zurich American Life Insurance Company.

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It is undisputed that VDBI neither adopted a rule on pollution exclusions nor gave notice of its intent to withdraw prior approval of the Unicover III policy containing pollution exclusions. VDBI would, under the circumstances, be estopped to claim that coverage existed. 20

Vermont's Supreme Court has consistently held that where statutory notice of intent to withdraw approval of a license or permit is mandated, generalized rulemaking or a change in agency position is not sufficient to amend the license. Vermont law also holds that an administrative agency cannot exceed its delegated authority. 24

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**Petition For Writ Of Certiorari To The
United States Court Of Appeals
For The Second Circuit**

PETITION FOR WRIT OF CERTIORARI

Universal Underwriters Insurance Company, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (App. 1) is reported at 947 F.2d 1023. The opinion of the United States District Court for the District of Vermont (App. 20)

is reported at 754 F.Supp. 358. The order of the Court of Appeals (App. 57) denying petitioner's motion for reargument is not reported.

JURISDICTION

The opinion of the United States Court of Appeals was entered on October 30, 1991. A timely motion for reargument was denied on November 29, 1991 (App. 57). On February 20, 1992, this Court granted an extension of time within which to file a petition for writ of certiorari until March 29, 1992 (App. 59). Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following constitutional provisions and statutes are set out verbatim in the Appendix:

United States Constitution,

Article I, Section 10;

Amendment V;

Amendment XIV

Vermont Statutes Annotated, Title 3

Sections 801, 814, 831, 832, 835-848

Vermont Statutes Annotated, Title 8

Sections 3541, 3542, 4201-4210

STATEMENT OF THE CASE

Universal Underwriters Insurance Company ("Universal") is a stock insurance company with its principal place of business in Kansas City, Kansas. Universal, which specializes in insuring automobile, truck and motorcycle dealers, does business in nearly every state. It staffs a Governmental Affairs Department, which is responsible for compliance with all of the nuances of the insurance regulatory requirements in the many states in which it does business. In Vermont, as elsewhere, Universal files with the Department of Banking and Insurance ("VDBI") forms of insurance policies and manuals of the rules and rates it intends to apply to those policy forms when writing coverage in Vermont. By statute, a liability insurance policy form cannot be used in Vermont unless the carrier has received prior approval of that form from VDBI, 8 V.S.A. §3541. (App. 87). Title 8 V.S.A. §§4201-4204 (App. 90) contains similar provisions specifically applicable to liability insurance policies.

In May, 1980, Universal submitted to VDBI for approval, its "Unicover III" insurance policy form. Unicover III, like Unicover II which preceded it, is a policy form especially designed for use in insuring automobile dealer risks. The Unicover III policy form, which specifically excludes coverage for claims based upon contamination of a watercourse by a petroleum substance was approved by VDBI for Universal's use in Vermont on May 19, 1980. (App. 110). A Vermont endorsement (the "Vermont State Amendatory Part") which references the pollution exclusions contained in the policy was filed with and approved as mandatory for use with the Unicover III policy. (App. 122-26). Universal subsequently filed a

number of amendments to its Unicover III policy form; none of the amendments approved for Universal's use prior to May 6, 1985 changed the Unicover III exclusion concerning petroleum pollution of a watercourse. An amended Universal Vermont endorsement referencing the Unicover III pollution exclusions (which remained unchanged by the amendment) was again approved by VDBI on October 26, 1983. (App. 231).

Universal's Governmental Affairs Department carefully monitored filings made in Vermont and elsewhere by the Insurance Services Office ("ISO"), an insurance rating and services organization representing a large number of carriers nationwide. Universal frequently informed VDBI, in the cover letter accompanying its filings and amendments thereto, how its filing differed from or was similar to "common insurance language," or a form ISO had on file. (See, e.g., App. 115). When Universal filed the first edition of its Unicover III policy form in May, 1980, it pointed out to VDBI that the Unicover exclusion pertaining to the "discharge or escape of petroleum into a body of water" differed from "standard language." (App. 121).

By statute, 8 V.S.A. §3541(b), (c) (App. 87), VDBI would be required to give Universal notice and an opportunity for hearing if it intended to withdraw the approval it previously gave to the Unicover III policy form. The statute pertaining to filing and approval of liability insurance policy forms provides, in pertinent part:

> (b) . . . The commissioner may at any time, *after notice and for cause shown,* withdraw any such approval. In any notice of disapproval, or withdrawal of a previously approved form, the commissioner shall state that *a hearing will be*

> *granted* within twenty days upon request of the Insurer.
>
> (c) Any order of the commissioner disapproving any such form or withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonably to inform the insurer thereof. . . .
>
> 8 V.S.A. §3541(b), (c) (emphasis added) (App. 87).

VDBI has never given Universal notice that it intends to withdraw approval of the Unicover III policy form.

Prior to and during the period of time when Universal had on file with VDBI its approved Unicover III policy form for automobile dealer risks, Universal, like many other carriers, maintained membership in ISO and had on file with VDBI a form authorizing ISO to file insurance policy rates and forms on its behalf. (The last ISO Authorization Form which Universal filed was dated October 1, 1982. (App. 266).)

The Vermont statute on filing and approval of policy forms provides that forms for use in casualty insurance may be filed by rating organizations on behalf of their members or subscribers, "but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf." 8 V.S.A. §3541(a) (App. 87). The ISO Authorization Form itself makes no suggestion that an insurer who signs it is thereafter precluded from filing separate, independent forms on its own behalf. Universal's Unicover III policy form contained a comprehensive general liability segment; some of the forms which ISO had on file with VDBI also contained general liability provisions. Universal filed its ISO Authorization Form with VDBI and the regulatory agencies of other states so that Universal could, if it chose,

write coverage on ISO forms in situations where its own specialized forms were not appropriate for the risk to be underwritten. In the overwhelming majority of cases Universal wrote coverage on its own forms and not on ISO's. Testimony from VDBI employees established that they could recognize the Unicover III policy on sight as being different from an ISO form, and that VDBI treated the Unicover III form as a filing separate from forms filed by ISO. (App. 366). VDBI consistently communicated directly with Universal, and not through ISO, about the Unicover III form in its files. Amendments and endorsements to the Unicover III policy were approved or disapproved on their own merit and not on the basis of whether ISO had approval for similar language. (See, e.g., App. 389-92; 403-04). In particular, a revised version of Universal's Vermont State Amendatory Part referencing the relevant pollution exclusions in the Unicover III policy was approved by VDBI on October 26, 1983, two weeks after VDBI informed ISO that ISO's general liability policy form could not contain pollution exclusions and one year after the last ISO Authorization Form was filed by Universal. (App. 231).

ISO's comprehensive general liability policy utilizes a different structure and different language from the Unicover III policy form. The ISO form also differed from Universal's in that, from some time prior to May, 1980 until January, 1983, the ISO comprehensive general liability form approved for use by ISO members in Vermont had a specific Vermont endorsement which deleted the pollution exclusion contained in the ISO policy.[2] Until

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[2] ISO, like Universal, files policy forms nationwide. Both ISO and Universal will submit a standard policy form to each

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January 1983, then, the approved ISO general liability form, unlike the Unicover III policy form, provided pollution coverage. In January, 1983, after ISO had assured VDBI that pollution coverage would be made available on a separate policy form, VDBI approved an amended ISO general liability policy form which excluded coverage for environmental pollution. In early October, 1983, however, VDBI informed ISO that if pollution coverage was not restored to ISO's general liability policy form, VDBI would withdraw its approval of that policy form. After some months of drafting and discussion with VDBI, ISO filed a Vermont endorsement which once again provided pollution coverage (by deleting the pollution exclusions contained in ISO's generic general liability policy form). ISO's Vermont endorsement was approved by VDBI effective July 1, 1984. Like Universal's Vermont State Amendatory Part, ISO's Vermont endorsement was approved as "mandatory" for use with ISO's comprehensive general liability policy form in Vermont.[3] Mandatory, in this context, is something of a term of art, and means that the endorsement must be used each time coverage is

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state in which they are filing, but add to that form endorsements or amendments designed to accommodate the peculiarities of each state's laws and regulations. Universal's Unicover III policy, for example, had a Vermont State Amendatory Part which was used with a Unicover III policy each time Universal wrote coverage in Vermont. ISO had its own Vermont endorsements.

[3] ISO did not delete the pollution exclusions from some of its other forms, including its Business Owners' Liability form, until approximately one year later.

written on the policy form to which it belongs. The word "mandatory" is used to make a distinction between endorsements which form an integral part of an approved policy form and endorsements which are optional – i.e., approved for a carrier's use when requested by and appropriate to a given risk. Universal, like other ISO members, received notice from ISO that ISO's Vermont endorsement was mandatory – in other words, that a carrier writing coverage on ISO's policy form in Vermont should in every instance attach ISO's Vermont endorsement.

At no time between May, 1980 when the Unicover III policy was first approved and May 6, 1985, the date plaintiff first received notice from the State of Vermont concerning its potential responsibility for an environmental clean-up, did the Unicover III policy form provide pollution coverage. Moreover, VDBI did not at any time advise Universal that its policy had to contain pollution coverage, or give Universal notice, pursuant to 8 V.S.A. §3541(b) and (c), that VDBI's approval of the Unicover III policy was going to be withdrawn. Nor did VDBI advise Universal that signing an ISO Authorization Form would preclude Universal from filing other different forms on its own behalf.[4]

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[4] The ISO Authorization Form (App. 266) states on its face that ISO's agency is "deemed amended" to the extent that Universal makes any VDBI filing on its own behalf which is inconsistent with the ISO filing on file. Universal's Unicover III insurance program, first approved by VDBI on May 19, 1980, was inconsistent with ISO's general liability policy if for no other reason than the pollution exclusions contained in Universal's policy. VDBI regulations provide that:

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Employees of VDBI testified at trial that a departmental policy in effect from the mid-1970's to January 1, 1983, and again after October 11, 1983, required carriers writing insurance in Vermont to provide pollution coverage. No formal rule or regulation requiring pollution coverage was adopted, however, and the Unicover III policy containing pollution exclusions was nevertheless approved while such a departmental policy was supposedly in place. VDBI employees also testified that their informal policy requiring pollution coverage (which they simply agreed to among themselves) (App. 361-63) was never applicable to insurance contracts written for insureds at high risk of pollution claims, such as businesses like Gerrish's which had underground storage tanks on their premises. (App. 392-93). VDBI employees later adopted, again informally, a procedure whereby insurers could exclude pollution coverage in high risk cases with the express consent of VDBI and acknowledgement of the insured. Universal eventually obtained

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> An insurer who has authorized a rating organization to submit . . . policy and/or form filings on its behalf may submit exceptions to that filing authorization. . . . The insurer may not use the insurance . . . policy or form which was filed by the rating organization in its behalf, on and after the effective date of its exception filing. Consequently, all subsequent revisions to the excepted rule, rate(s), etc., which are submitted by the rating organization, *will not apply* on behalf of such an insurer.
>
> Such an exception filing applies indefinitely . . . or until it is replaced or withdrawn.
>
> Reg. 81-3, Sec. VIII (emphasis added) (App. 313-14).

blanket advance consent of VDBI (so long as each individual insured acknowledged the pollution exclusions in writing), because virtually all of Universal's automobile dealer insureds, including Gerrish, fall in the high pollution risk category. (App. 367; 392-93).

Universal issued a renewal insurance policy for Gerrish, effective September 1, 1984 through September 1, 1985, on its Unicover III policy form, as that form had been approved, word-for-word, by VDBI. The renewal policy thus took effect two months after the effective date that pollution coverage was reincorporated into ISO's generic general liability policy form.

On May 6, 1985, Gerrish received notice from the Vermont Agency of Environmental Conservation that a petroleum product migrating from Gerrish's property was polluting the Ottauquechee River, a Vermont watercourse. Gerrish's attorneys sought coverage from Universal under the comprehensive general liability provisions of Gerrish's Unicover III policy. Universal referred Gerrish to the pollution exclusions in the policy, and undertook to monitor and manage environmental damage to the site only under a reservation of rights agreement. Gerrish then filed the instant declaratory judgment action in the United States District Court for the District of Vermont.

Gerrish's complaint sought a declaration that Universal was obligated to defend and indemnify Gerrish against costs it might incur in responding to the State's May 2, 1985 letter. Gerrish's complaint sought to avoid the effect of the pollution exclusions in his insurance policy on the grounds that VDBI did not permit pollution

exclusions in general liability insurance policies written in Vermont and, therefore, the policy issued to Gerrish had to be amended to conform to departmental policy. Complaint, ¶30 (App. 106).

Universal defended on the grounds that the insurance policy issued to Gerrish constituted a contract, the form of which was specifically approved for Universal's use in Vermont; that VDBI had not given Universal notice, as required by 8 V.S.A. §3541(b) and (c) and the Due Process Clause of the United States Constitution, that its prior approval of the Unicover III policy form was going to be withdrawn; and, that, in any event, VDBI had no authority under its enabling legislation, specifically 8 V.S.A. §3542, to require that liability insurance policies contain particular substantive provisions, such as pollution coverage. Universal also argued that environmental response costs mandated by the State's letter did not constitute "damages" under the insuring agreements of the policy, and that the "owned property exclusion" in the Unicover III policy defeated coverage.

After hearing, the district court held, in an opinion by the Hon. Fred I. Parker dated December 5, 1990, that: (1) Universal had notice of VDBI's departmental policy prohibiting pollution exclusions through receipt in July, 1984, of an ISO bulletin stating that the pollution exclusions contained in ISO's general liability policy form had to be deleted, and (2) that VDBI, therefore, was not required to give Universal notice of and an opportunity for a hearing on withdrawal of its prior approval of Universal's Unicover III policy form, as required by 8 V.S.A. §3541(b) and (c) (App. 87). The district court also held that: (1) VDBI, by virtue of its general authority to

approve and disapprove policy forms, could "decide[ ] as a matter of policy that it will not approve certain [substantive] types of coverage, or exclusions" (App. 52);[5] (2) that VDBI was not obligated to follow the rulemaking procedures of Vermont's Administrative Procedures Act, 3 V.S.A. §§801-849, in adopting a rule or regulation on pollution coverage because VDBI "let it be known [to ISO] what it intended to do with regard to filings pertaining to pollution coverage" (App. 52); (3) that Universal had waived the question of VDBI's jurisdiction to adopt a substantive rule on pollution coverage by not raising the issue in October, 1983, when VDBI told ISO it intended to withdraw approval of ISO's general liability policy form (App. 52); and (4) that Universal's Unicover III policy was, therefore, deemed amended by the provisions of ISO's endorsement deleting the pollution exclusion in ISO's general liability policy form. The district court concluded by holding that environmental response costs constitute damages under the insuring provisions of the policy (App. 53), and that the owned property exclusion contained in the policy did not defeat coverage. (App. 39). The court ordered Universal to afford Gerrish coverage for environmental clean-up costs in accordance with the provisions of the July 1, 1984 ISO policy endorsement.

On appeal, the Second Circuit affirmed the decision of the trial court, but on somewhat different grounds. The

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[5] The district court either overlooked or ignored 8 V.S.A. §3542, which provides that the Commissioner of VDBI can disapprove a liability insurance policy form only on one or more of four stated grounds, none of which includes any reference to substantive policy provisions of any kind, let alone to pollution coverage.

Second Circuit did not address the notice and opportunity for hearing provisions of the Vermont statute or consider Universal's argument that those provisions in the statute were constitutionally required. Nor did the circuit court consider either VDBI's jurisdiction to reject liability insurance policies on substantive grounds or the validity of VDBI's informal "no pollution exclusions" departmental policy. Indeed, the Second Circuit did not even cite Vermont's insurance regulatory statutes, but purported to base its decision on "general rules of contract and insurance law." (App. 13). After citing the "basic tenet of insurance law that once an insurance contract is accepted by both parties, the parties are bound by it" (App. 12), and finding that the "Universal Unicover III policy in the form in which it was issued to Gerrish did *not* cover [the state's pollution] claim" (App. 10) (emphasis added), the circuit court's opinion goes on to hold that Universal, by signing an ISO Authorization Form in 1982, "implicitly empowered ISO to alter the Unicover policy" (App. 11), and that the ISO endorsement approved in July, 1984 for use with ISO's generic general liability policy, therefore, serves to amend Universal's Unicover III policy.

The Second Circuit's opinion in this regard curiously does not explain why an insurance contract accepted by both parties should be "deemed" amended by an endorsement which the insured never saw and the insurer had no intention of including in the contract. At the district court level it had been assumed, as claimed in the complaint, that Vermont's insurance statutes and regulations could have the effect of amending a contract not in conformance therewith – and the district court had

found that VDBI required pollution coverage. The Second Circuit's opinion, however, which does not refer to Vermont's insurance statutes or regulations, does not rely on "conformance to law" principles to imply a contract amendment. The Second Circuit purports to rely instead on Vermont agency law, but takes a quantum leap beyond the holdings of the Vermont automobile collision cases which it cites. Vermont case law, like that of most states, holds that an agent may bind his principal in a transaction with a third party, where the third party relies upon the authority of the agent – real or apparent – in the transaction in question. *See, e.g., Blumenthal v. Brainerd*, 38 Vt. 402, 409 (1866). The Second Circuit's opinion in this case, however, binds the principal (Universal) by actions of an agent (ISO) in an unrelated transaction of which the third party (Gerrish) had no knowledge, and on which the third party, therefore, did not rely. The only possible rationale for such an extension of traditional contract and agency principles would be the operation of Vermont's regulatory statutes, but the Circuit's opinion omits any reference to those statutes. Because it did not cite the relevant insurance regulatory statutes, the Second Circuit did not address (a) Universal's argument that notice from VDBI of its intent to withdraw (or modify) Universal's previously approved Unicover III policy form was required both by the Vermont statute and by the Due Process Clause of the Federal Constitution or (b) Universal's claim that VDBI had no authority to prohibit pollution exclusions.

The Second Circuit's opinion also affirmed the district court's holding that environmental response costs constitute damages under the insuring provisions of the

policy, and that the owned-property exclusion does not defeat coverage even where the required environmental response would entail cleaning up the insured's own property.

REASONS FOR GRANTING CERTIORARI

Certiorari should be granted because the judicial decisions in this case did what neither the legislature nor the executive department of Vermont government could constitutionally have done, namely read the notice and opportunity for hearing provisions right out of the Vermont insurance regulatory statutes.

When the State of Vermont determined to subject contracts of insurance to state regulation, it built into its statutes the procedural protections which the Due Process Clause requires. Vermont statutes contain both an Administrative Procedures Act ("APA"), 3 V.S.A. §§801-849, which incorporates notice and comment provisions appropriate for generalized rulemaking, and specific insurance form filing procedures, 8 V.S.A. §3541, which contain notice and hearing provisions appropriate to individualized adjudicatory determinations. No Vermont proceeding, legislative or adjudicatory, has found those constitutionally mandated protections inapplicable to Universal's use of its pre-approved insurance policy form. Federal judicial construction, however, simply airbrushed the constitutional protections out of Vermont's regulatory scheme, thereby implicating both Universal's due process rights and serious issues of federalism. In *Bouie v. Columbia*, 378 U.S. 347 (1964), this Court found

that a due process violation was created by judicial construction of a criminal statute. This case presents an analogous situation in the civil context; that is, Universal's statutorily protected due process property rights have been infringed by judicial decision.

Insurance companies nationwide file policy forms, rates and schedules for approval by state regulatory agencies, some independently and some through reliance upon filings by ISO. As this case illustrates, carriers writing insurance policies need to know, not in a general way, but down to the letter, the comma, and the last conjunction, what form has been approved for their use. The chaos which would be occasioned if state administrative agencies were to adopt the haphazard and casual regard for notice and hearing procedures which the lower courts adopted here would be staggering. The Vermont Supreme Court has not countenanced such careless attention to the notice and hearing protections of its state's statutes. *See, e.g., In re Petition of Vermont Welfare Rights Organization*, 132 Vt. 622, 326 A.2d 828 (1974). The Second Circuit's opinion, however, which "deems" an insurance contract amended in the admitted absence of administrative regularity, leaves both insured and insurer in the dark with respect to the terms of the contract between them. In the instant case it was the insured who benefited by expansion of the contracted coverage, but nothing in the Second Circuit's opinion distinguishes the case from one in which an undisclosed amendment of a policy would inure to the benefit of the carrier.

Universal wrote insurance coverage for Gerrish on a form of policy which had received the affirmative prior approval of VDBI for Universal's use in Vermont. The

policy as written excluded coverage for pollution damage. VDBI never advised Universal that approval of its policy form was withdrawn or changed. VDBI would have been estopped, both by virtue of the affirmative approvals it gave to Universal's pollution exclusions and by its continued course of dealings with Universal to compel Universal to afford Gerrish coverage for this claim.[6]

The Vermont Supreme Court has been particularly vigilant that the administrative agencies of the state act only within their delegated powers, i.e., those set forth in their enabling legislation. *See, e.g., In re Agency of Administration*, 141 Vt. 68, 75, 444 A.2d 1349, 1352 (1982). The refusal of both the district court and the Second Circuit to hear Universal on the issue of VDBI's authority to prohibit pollution exclusions is an unseemly breach of the principles of federalism which should instruct a federal court's interpretation of state administrative and regulatory schemes.

The decisions of the district court and the Second Circuit are not just wrong and contrary to the jurisprudence of the State of Vermont, which, after all, has the primary interest in the matter at hand; the decisions impose by judicial fiat a deprivation of constitutionally guaranteed property rights.

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[6] State courts, including Vermont's, have been less loath to find their governments estopped than have been federal courts. *Compare, e.g., My Sister's Place v. City of Burlington*, 139 Vt. 602, 433 A.2d 275 (1981) with *Heckler v. Community Health Services*, 467 U.S. 51 (1984).

The holding of the Second Circuit that environmental response costs constitute damages under the liability insurance policy also adds fuel to the conflict among the Circuits over the so-called "as damages" issue.

ARGUMENT

The notice and hearing provisions of Vermont's insurance regulatory statutes are constitutionally required.

It is by this late date settled law that an administrative agency charged with the regulation of what would otherwise be private conduct must afford the regulated who appear before it at least minimal due process protections of notice and the opportunity to be heard. *Hannah v. Larche*, 363 U.S. 420 (1960); *Wong Yang Sung v. McGrath*, 339 U.S. 33 (1950). (Due process requirements are, of course, made applicable to the states by the operation of the 14th Amendment.) Notice may be contained in the announcement of generalized rulemaking which, through prospective application, may affect property rights, *Pension Benefit Guaranty Corp. v. R. A. Gray & Co.*, 467 U.S. 717 (1984), *Texaco, Inc. v. Short*, 454 U.S. 516 (1982), or through individualized notice of adjudicatory proceedings where general rules are applied to specific cases. *See, e.g., Goldberg v. Kelley*, 397 U.S. 254 (1970). The nature of the right which is in danger of infringement, of course, determines the extent of the process which is due. *Id.* at 263.

Vermont's APA and its insurance regulatory statutes provide for the exercise, by VDBI, of both legislative and adjudicatory functions. Vermont's APA states that:

> where due process or a statute directs or permits an agency to adopt rules, regulations or both,

> unless that statute expressly provides to the contrary, it shall be construed as requiring or permitting the agency to adopt rules in the manner provided in this chapter.
>
> 3 V.S.A. §831(a) (App. 67).

The statute then goes on to set forth conventional notice and comment provisions for administrative rulemaking, 3 V.S.A. §835-48 (App. 69-85). The Vermont APA also states that:

> no revocation, suspension, annulment, or withdrawal of any license[7] is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. . . .
>
> 3 V.S.A. §814(c) (App. 66).

The insurance regulatory statutes reiterate these notice and hearing requirements by providing that VDBI may withdraw prior approval of a policy form only after giving the insurer notice of the proposed withdrawal and an opportunity for hearing thereon. 8 V.S.A. §3541(b) (App. 87). The provision for notice is form-specific; that is, the commissioner must direct his disapproval or withdrawal of prior approval to a particular form. 8 V.S.A. §3541(b) and (c) (App. 87).

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[7] A "licensee" is defined in the prefatory section of the Vermont APA to include "the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law." 3 V.S.A. §801(b)(3) (App. 64).

While the statutes could arguably have been constructed differently, there is no doubt that the Vermont Legislature intended the provisions to comport with the mandates of due process. *Vermont Real Estate Commission v. Martin*, 132 Vt. 309, 311, 318 A.2d 670, 672 (1974) ("An administrative agency hearing on a license suspension is subject to the essentials of due process. . . . The essentials of due process are notice and the opportunity to be heard," (citations omitted)).

It is undisputed that VDBI neither adopted a rule on pollution exclusions nor gave notice of its intent to withdraw prior approval of the Unicover III policy containing pollution exclusions. VDBI would, under the circumstances, be estopped to claim that coverage existed.

In the complaint and at trial, Gerrish contended that a VDBI departmental policy prohibiting pollution exclusions rendered invalid those portions of the Unicover III policy which contain the relevant pollution exclusions. The district court relied upon the existence of a departmental policy, albeit an informal one, to "deem" Universal's policy amended to conform to VDBI's requirements, which stemmed from negotiations with ISO and resulted in ISO's "Vermont Pollution Endorsement." In the face of Universal's argument on appeal that no validly enacted VDBI policy compelled inclusion of pollution coverage in the Unicover III policy, Gerrish abandoned reliance on its claim grounded in VDBI agency policy, and the Second Circuit made no finding that such a policy existed. With the concessions, then, that rulemaking procedures had not been followed and no regularly adopted departmental policy existed, support for judicial revision of previously approved contractual terms would seem to demand

proof of compliance with statutory notice and hearing requirements for withdrawal of (or amendment to) a previously approved "license," as the Vermont APA, 3 V.S.A. §801(b)(3) (App. 64), refers to agency approval. Neither the court of appeals nor the district court found, however, that procedures for withdrawal of prior approval had been instituted. Both courts effectively held, instead, that the statutorily required form-specific notice could be dispensed with in the case of the Unicover III policy, since Universal (the proprietor of the Unicover III form) received from ISO notice that VDBI intended to withdraw approval of an ISO policy form unless it were amended to include pollution coverage.[8]

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[8] In this regard, Gerrish made much of several internal Universal office memoranda, which demonstrated that Universal had notice of VDBI action with respect to the ISO general liability policy form. The memoranda referred to are reproduced at App. 273-74. There is no doubt, as the memoranda demonstrate, that Universal was on notice that ISO's general liability policy form was amended in July, 1984, to include pollution coverage, and that the amendment was, in VDBI parlance, "mandatory." The memoranda also demonstrate that Universal took the notice from ISO about changes in the ISO policy to mean that Universal would eventually have to amend its own policy, either because of pressure from VDBI or because of the need to compete with the sale of ISO policies in the marketplace. At the same time, however, the memoranda suggest that it never occurred to Universal that the ISO endorsement could simply be tacked onto the Unicover III policy form, without its submission to and approval by VDBI for use with the Unicover III policy form. Universal's response to the ISO notice was not to start printing the ISO language for use with Universal policies, but was instead to begin to draft language for a new Universal endorsement, which would track the language of the Unicover III policy, while at the same time discussing other alternatives to providing pollution coverage.

Constitutionally required notice from an administrative agency can be waived in certain circumstances where it is apparent that the regulated entity is advised of expected agency action. In the case at hand, plaintiff was able to prove that Universal had notice of expected agency action toward another player, ISO, but offered nothing to suggest that Universal was apprised that VDBI action affected the previous stamp of approval issued to the Unicover III policy. Learning that one's neighbor will have to alter plans submitted in support of a building permit application, for example, is hardly adequate to advise the holder of a previously approved permit that his permit is now deemed amended.

The practice of VDBI, for all the years Universal dealt with them, had been to communicate directly with Universal about changes, amendments, or additional filings in connection with the Unicover III program. VDBI employees discussed Universal's filings with Universal employees over the telephone and in writing. The trial exhibits contained many items of correspondence between VDBI and Universal's Governmental Affairs Department. Not one of the more than 400 pages filed in connection with the Unicover III program between 1980 and 1985 was filed by ISO, and not one of VDBI's responses to those filings was directed to ISO. VDBI employees testified that they knew on sight that the Unicover III policy "was obviously not an ISO form being used" (App. 364), that they treated it as a separate and distinct filing (App. 407), and that they did not consult the ISO Filing Authorization Forms on file to determine whether a filing was independent of ISO (App. 364). In at least two instances, when universal sought VDBI approval to use policy language which had been approved for ISO's use, approval was denied. VDBI's

practice in this regard was consistent both with its own rules on independent filings, which make the updating and amendment of independent, i.e., non-ISO forms, the responsibility of the filing carrier, VDBI Reg. 81-3, Sec. VIII (App. 313-14), and with 8 V.S.A. §3541 (App. 87), which contemplates form-specific approval or disapproval of filed forms.[9]

An administrative agency which adopts regulations and practices for conducting its business must act in a manner consistent therewith. *Morton v. Ruiz*, 415 U.S. 199, 232 (1974). A governmental agency's failure to follow its own procedures, even where not mandated by statute, may preclude that agency from taking action which affects the rights of an individual dealing with the agency. *See, e.g., Corniel-Rodriguez v. I.N.S.*, 532 F.2d 301, 306-07 (2d Cir. 1976). In Vermont, at least, a governmental agency which has lulled another into inaction by its assurance that individual notice will be provided is estopped to benefit from the other's inaction. *Village of*

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[9] Given the attention to detail that must attend the drafting, filing and administrative approval of insurance policy forms, a filing system not directed to specific forms would be unthinkably chaotic. Vermont statutes are very clear that VDBI "shall disapprove" a form of liability policy if it contains clauses that are "inconsistent, ambiguous or misleading." 8 V.S.A. §3542(2) (App. 89). If forms were approved by reference to similar filings by other insurers, or to vague departmental positions on issues of social worth, such as the allocation of the costs for environmental clean-up, rather than by reference to the specific language of the particular form being examined there would inevitably be inconsistencies and ambiguities. Moreover, neither insurer nor insured could comfortably assume that the policy he held in his hand was the contract which governed his relationship with the other.

Morrisville Water & Light Dept. v. Town of Hyde Park, 129 Vt. 1, 3, 270 A.2d 584, 586 (1970), cited with approval in *My Sister's Place v. City of Burlington,* 139 Vt. 602, 609, 433 A.2d 275, 279 (1981). While this Court has been reluctant to find the federal government estopped by the conduct of its employees when the public treasury will be charged, *Schweiker v. Hansen,* 450 U.S. 785 (1981), this case does not involve depletion of public funds. Moreover, even while announcing a general distaste for estoppel by government, this Court has quoted Justice Black's observation that:

> It is no less good morals and good law that the Government should turn square corners in dealing with the people than that the people should turn square corners in dealing with their government.

St. Regis Paper Co. v. United States, 368 U.S. 208, 229 (1961) (Black, J., dissenting), quoted in *Heckler v. Community Health Services,* 467 U.S. at 61, fn. 13. If VDBI itself had sought to compel Universal to provide coverage in accordance with the terms of ISO's Vermont endorsement, VDBI would have been estopped, under Vermont law, by its own failure to give Universal statutory notice, coupled with its prior conduct in treating the filings as independent of ISO, from asserting that Universal could not write coverage on the approved Unicover III form. *Village of Morrisville v. Town of Hyde Park, supra.*

Vermont's Supreme Court has consistently held that where statutory notice of intent to withdraw approval of a license or permit is mandated, generalized rulemaking or a change in agency position is not sufficient to amend the license. Vermont law also holds that an administrative agency cannot exceed its delegated authority.

The Vermont Supreme Court has on several occasions considered the effect on existing licenses or permits of

changes in the granting agency's rules or policies of general application. In both *In re Petition of Vermont Welfare Rights Organization,* 132 Vt. 622, 326 A.2d 828 (1974), and *Carpenter v. Home Telephone Co.,* 122 Vt. 50, 163 A.2d 838 (1960), for example, the Vermont Supreme Court held that the Public Service Board could not, even through valid APA rulemaking with appropriate notice and comment procedures, affect a utility's individually filed rate schedule previously approved by the Board, where the statute specified procedures for withdrawal of an approved rate schedule: "rate schedules on file with the Public Service Commission become lawful rates which remain in force until changed in the manner prescribed by statute." *Carpenter v. Home Telephone Co.,* 122 Vt. at 53, 163 A.2d at 841 (citations omitted).

In the instant case, the district court and the Second Circuit dispensed with the requirement for either rulemaking or individualized notice, and found a negotiated agreement with ISO sufficient to amend Universal's approved license.

The Vermont reports are also replete with cases where the Vermont Supreme Court has admonished administrative agencies to "operate for the purposes and within the bounds authorized by [their] enabling legislation." *In re Agency of Administration,* 141 Vt. 68, 75, 444 A.2d 1349, 1352 (1982). *See also, e.g., In re Vermont Gas Systems, Inc.,* 150 Vt. 34, 549 A.2d 627 (1988); *New Hampshire-Vermont Physician Service v. Commissioner,* 132 Vt. 592, 596, 326 A.2d 163, 166 (1974) (Commissioner of Banking and Insurance not authorized to "control aspects of contract coverage"). Universal endeavored from the outset of this litigation to raise the issue of VDBI's authority

to prescribe the substantive provisions of a liability insurance policy. The district court found that Universal had waived the issue of authority (App. 52) despite this Court's decisions in *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 311, n. 10 (1979) and *McKart v. United States*, 395 U.S. 185, 197 (1960) that an agency's authority to act is a question of subject matter jurisdiction which is not waived by failure to raise it before the agency. The Second Circuit simply ignored the issue. The lower courts themselves thereby prescribed the substantive provisions of the liability insurance policy Universal issued to Gerrish.

In an unwarranted intrusion upon Vermont jurisprudence, the federal courts in this case have, by judicial construction, deprived a party of basic due process protections.

In *Bouie v. Columbia*, 378 U.S. 347 (1964), this Court held that due process protections preclude a federal court from applying an expanded definition of criminality to conduct which occurred prior to adoption of the new standard. Interpreting *Bouie*, the Ninth Circuit Court of Appeals has noted that "[i]t is whether an act of judicial enlargement has occurred . . . that is determinative of the due process question." *United States v. Goodheim*, 651 F.2d 1294, 1298 (9th Cir. 1981). The Sixth Circuit Court of Appeals has noted that:

> The federal courts of appeals have universally suggested that the right to due process prevents judicially wrought retroactive increases in levels of punishment [in the criminal context] in precisely the same way that the ex post facto clause does when the changes are produced by legislation. . . .

> Circuit courts have typically echoed language in *Bouie* suggesting that 'a state Supreme Court is barred by the due process clause from achieving by judicial construction a result which a state legislature could not obtain by statute.'

Dale v. Haeberlin, 878 F.2d 930, 934 (6th Cir., 1989). In this case, the federal courts have, by judicial construction, required Universal to pay hundreds of thousands of dollars of environmental response costs under the terms of an insurance policy it never wrote, for which it never charged a premium, and with respect to which it never had opportunity to inquire about the extent of the risk underwritten[10] – a deprivation of basic due process notice and hearing requirements which could not have been accomplished by statute, and which would not have been countenanced by the Vermont Supreme Court.

The "as damages" issue warrants this Court's review.

Finally, the holding of the Second Circuit that Universal must bear the financial burden of any environmental response costs that Gerrish may be ordered to pay fuels the fire of controversy that rages among the circuit courts over the so-called "as damages" issue. Presently, four circuits have interpreted the standard insurance policy language, which appears in Gerrish's Unicover III policy, that obligates the insurer to pay all sums which the insured legally must pay "as damages" to encompass

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[10] Gerrish knew that approximately 5,000 gallons of gasoline had escaped from an underground storage tank on his property well before the policy at issue was written. Universal did not inquire about such risks because the policy it wrote excluded pollution coverage.

environmental response or clean-up costs[11] and four circuits have held that the term "damages," as used in the insurance policies at issue, does not encompass such equitable or restitutionary relief.[12] Curiously, in

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[11] *Avondale Industries, Inc. v. Travelers Indemnity Co.*, 887 F.2d 1200 (2d Cir. 1989), *cert. denied*, ___ U.S. ___, 110 S.Ct. 2588 (1990) (under New York law, clean-up costs come within comprehensive general liability coverage "as damages"); *New Castle County v. Hartford Accident and Indemnity Co.*, 933 F.2d 1162 (3rd Cir. 1991) (under Delaware law, the term "damages" as used in insured's general liability policy encompasses response costs and other equitable relief the insured was required to pay); *Aetna Casualty and Surety Co., Inc. v. Pintlar Corp.*, 948 F.2d 1507 (9th Cir. 1991) (holding that, under Idaho law, CERCLA response costs constitute "damages" as that term is used in insured's general liability policy); *Independent Petrochemical Corp. v. Aetna Casualty and Surety Co.*, 944 F.2d 940 (D.C. Cir. 1991) (under Missouri law, "damages" included costs the insured was legally obligated to pay the United States and state as reimbursement for activities in remedying environmental harm).

[12] *A. Johnson & Co., Inc. v. Aetna Casualty and Surety Co.*, 933 F.2d 66 (1st Cir. 1991) (under Maine law, administrative and clean-up costs were held equitable in nature and, therefore, not "damages" under insured's policy); *Mraz v. Canadian Universal Ins. Co., Ltd.*, 804 F.2d 1325 (4th Cir. 1986) (CERCLA response costs are economic loss and not equated with "injury to or destruction of tangible property," the policy at issue's definition of property damage); *Maryland Casualty Co. v. Armco, Inc.*, 822 F.2d 1348 (4th Cir. 1987) (CERCLA claim made against insured for injunctive and restitutionary relief not a claim for "damages" under insured's general liability insurance policy); *Aetna Casualty and Surety Co. v. Hanna*, 224 F.2d 499 (5th Cir. 1955) ("damages," as distinguished from injunctive or restitutionary relief, includes only payments to third persons with a legal claim for damages); *Continental Insurance Cos. v.*

(Continued on following page)

apparently only one case involving a dispute over a pollution exclusion in an insured's general liability policy has a circuit court certified the issue to the relevant state court.[13] This fact is of particular relevance where, in the instant case, there is nothing in Vermont law which compelled the district and circuit courts to hold as they did on this issue.

The present controversy concerning the "as damages" issue was recently forthrightly addressed by the Eighth Circuit:

> [S]tandard form CGL insurance policies use virtually the same language around the country, and general principles of insurance law do not vary greatly from state to state. The real issue, of

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(Continued from previous page)

Northeastern Pharmaceutical & Chemical Co., Inc., 842 F.2d 977 (8th Cir. 1988), *cert. denied*, 488 U.S. 821 (1988) (under Missouri law, "damages" in the standard comprehensive general liability insurance policy does not include clean-up costs); *Parker Solvents Co. v. Royal Insurance Cos.*, 950 F.2d 571 (8th Cir. 1991) (hereinafter *Parker Solvents*) (under Arkansas law, clean-up costs not encompassed within meaning of the word "damages" in standard form comprehensive general liability insurance policy); *Grisham v. Commercial Union Insurance Co.*, 951 F.2d 872 (8th Cir. 1991) (echoing holding of *Parker Solvents*).

[13] In *Claussen v. Aetna Casualty & Surety Co.*, 888 F.2d 747 (11th Cir. 1989) where there was a dispute between the insured and the insurer over the meaning of the word "sudden," the Eleventh Circuit, recognizing that the issue involved interpretation under Georgia law of the pertinent pollution exclusion and policy language and that similar provisions and language have received conflicting interpretations in other jurisdictions, certified the question of liability to the Supreme Court of Georgia.

> course, is whether the insurance industry should be compelled to help finance an immense environmental clean-up obligation that was not anticipated, by insureds or insurers, at the time these policies were written. On this difficult issue, which transcends state boundaries and has important public policy implications, it is not surprising that judges disagree.

Parker Solvents, 950 F.2d at 572. Accordingly, because of the decisive split among the circuit courts, the federalism and due process issues involved, and the far reaching and potentially crippling public policy concerns unleased, the "as damages" issue cries out for the wisdom of this Court and the exercise of this Court's supervisory powers.

CONCLUSION

The district court and the Second Circuit, in their eagerness to find available insurance coverage for environmental response costs, have stripped the Vermont statutes of the due process protections provided by the Vermont Legislature. The judicial decisions of the lower courts so far depart from the accepted and usual course of judicial proceedings in this regard that a grant of certiorari is appropriate.

Respectfully submitted,

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March, 1991

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 1480 August Term, 1990

(Argued May 22, 1991 Decided October 30, 1991)

Docket No. 91-7008

GERRISH CORPORATION, doing business as Gerrish Motors, doing business as Scrub-a-Dub,

Plaintiff-Appellee,

v.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY,

Defendant-Appellant.

Before: VAN GRAAFEILAND, MESKILL and McLAUGHLIN, *Circuit Judges.*

Appeal from a judgment entered in the United States District Court for the District of Vermont, Parker, *J., Gerrish Corp. v. Universal Underwriters Ins. Co.*, 754 F.Supp. 358 (D. Vt. 1990), declaring that appellant Universal Underwriters' policy as amended by Insurance Services Organization required Universal Underwriters to defend appellee Gerrish Corp. and that Universal Underwriters could be liable for cleanup costs as well as other damages.

The judgment of the district court is affirmed.

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William H. Allen, Saul B. Goodman, William F. Greaney, Stanlake J.T.M. Samkange, Covington & Burling, Washington, D.C., on the brief,
for Amici Curiae The American Petroleum Institute, The American Fiber Manufacturers Association, International Business Machines Corporation, and Olin Corporation.

MESKILL, *Circuit Judge*:

In this diversity action we must determine whether an insurance organization authorized to act on behalf of member insurance companies can substantively alter a policy of insurance that was traditionally amended only by the insurance company and whether environmental

response costs fall within the meaning of "damages" under a general liability policy.

This is an appeal from a judgment of the United States District Court for the District of Vermont, Parker, *J.*, entered on December 5, 1990. *See Gerrish Corp. v. Universal Underwriters Ins. Co.*, 754 F.Supp. 358 (D. Vt. 1990). The judgment declared that appellant Universal Underwriters Insurance Company (Universal) was required to defend appellee Gerrish Corporation (Gerrish) in an environmental action threatened by the State of Vermont. The judgment also proclaimed that Universal could be responsible for the payment of cleanup costs as well as for other damages. Universal appeals claiming that the liability policy issued to Gerrish excluded coverage for Vermont's pollution claim, that Insurance Services Organization (ISO) did not amend the Gerrish policy, that environmental response costs are not recoverable as damages under the Gerrish policy, and that Gerrish cannot succeed in this action because of the "owned property" exclusion in the policy.

We agree with the district court that the policy issued by Universal to Gerrish was amended by ISO, that the policy covers Vermont's pollution claim, that environmental response costs are damages as that term is used in the policy and that the "owned property" exclusion does not bar Gerrish's claim. We therefore affirm the judgment of the district court.

BACKGROUND

The background of this litigation, filed under the Federal Declaratory Judgments Act, 28 U.S.C.A. § 2201, is

set forth in the opinion of Judge Parker. 754 F.Supp. 358. The facts relevant to this appeal are summarized below.

Gerrish, a Vermont corporation with its principal place of business in Woodstock, Vermont, is the owner of Woodstock East, a small shopping center in Woodstock, Vermont. Two of the businesses on the property are Gerrish Motors, an automotive dealership, and Scrub-a-Dub, a car wash and gas station, both of which are subdivisions of Gerrish.

Defendant, Universal is a stock insurance company with its principal place of business in Kansas City, Missouri. Universal is licensed to engage in the business of selling insurance in the State of Vermont. On September 1, 1984 Universal issued a general liability policy, hereinafter the Unicover III policy, covering the Gerrish property. The events that led to the instant controversy are outlined below.

In November 1973 Scrub-a-Dub realized that approximately 4,785 gallons of gasoline had been lost from its underground fuel storage tanks. The tanks were tested, excavated, and a tank thought to be leaking was replaced. Gerrish made no attempt to clean up the subsurface spilled gasoline. Gerrish subsequently leased the Woodstock East property and shopping center to Woodstock Associates but, through various lease and leaseback arrangements, Gerrish retained ownership, possession and control of the Scrub-a-Dub facilities.

On May 2, 1985 Gerrish was notified by Vermont's Agency of Environmental Conservation that petroleum pollution emanating from Woodstock East was migrating into neighboring property and into a natural drainage

stream that emptied directly into the Ottauquechee River, creating a hazard to the public and the environment. Vermont advised that Gerrish could on its own take corrective measures under Agency supervision to alleviate the harm. Alternatively, if Gerrish failed to take action, the Agency of Environmental Conservation would arrange for the cleanup and would seek reimbursement from Gerrish. Vermont informed Gerrish that a State-managed cleanup is typically more expensive than a privately undertaken environmental response. Prior to its discussions with Vermont, Gerrish was unaware of the existence of any underground contamination on the Woodstock East property.

On June 11, 1985 Gerrish contacted Universal, its insurer, and demanded that Universal be responsible for all costs involved in monitoring and cleaning up the source of the pollution under the policy issued by Universal to Gerrish for the September 1, 1984 to September 1, 1985 period.

The Universal Unicover III Policy

The original policy issued to Gerrish by Universal was the Unicover III Motor Vehicle Dealers Policy approved by the Vermont Department of Banking and Insurance (VDBI) in 1980. The policy obliged Universal to "pay all sums which the INSURED legally must pay as damages . . . because of INJURY" to which the policy applies. The policy defined "INJURY" as "bodily injury, sickness, disease, or disability . . . or damage to or loss of use of tangible property." The policy contained certain

exclusionary language in Part 500 Garage Coverage, including the following:

> Exclusions – This insurance does not apply to:
>
> . . . .
>
> (m) INJURY caused by the dumping, discharge, or escape of irritants, pollutants or contaminants. This exclusion does not apply if the discharge is sudden and accidental;
>
> (n) INJURY caused by the discharge, release, or escape of any petroleum substance into or upon any body of water or water course, regardless of the nature of the discharge, release, or escape (whether accidental or not).

The same language was included in Part 950 General Liability Coverage in sections labelled (e) and (f).

Two other pertinent exclusions were included in the general liability portion of the Unicover III policy. They state:

> Exclusions – This insurance does not apply to:
>
> . . . .
>
> (k) INJURY to property owned by, rented or leased to, used by, or in the care, custody or control of the INSURED. . . .
>
> (l) INJURY to premises after YOU transfer ownership or possession to another, if INJURY is caused prior to the transfer.

Although Universal revised the Unicover III policy several times between 1980 and 1985, none of those alterations affected any of the exclusions quoted above.

Universal is a member of ISO, an insurance rating organization comprised of insurance companies. ISO provides various services for its members, including the drafting and filing of insurance forms with various state insurance departments. In 1982 Universal signed a broad authorization (Authorization), empowering ISO to act on its behalf before the VDBI and filed it with Vermont's Commissioner of Insurance. The document authorized ISO to file "rates, rules, [and] forms" with respect to general liability insurance, as well as several other insurance areas. Universal did not limit ISO's authority with respect to general liability insurance policies or pollution exclusions. The Authorization contained a provision that stated: "This Filing Authorization shall be deemed amended to the extent that any filing is made in your office directly by the undersigned company and is inconsistent with the filing of said Insurance Services Office."

In a circular dated June 4, 1984 ISO notified all its members that a new pollution endorsement had been developed, filed with the VDBI and approved for use. The new pollution provision provided insurance coverage for all pollution incidents, whether sudden or not, on a claims-made basis, subject to an aggregate limit, and was to be included in all ISO members' policies issued after July 1, 1984. The ISO circular informed members that they were automatically deemed to accept the endorsement; they had to contact the VDBI prior to July 1, 1984 if they did not want to be bound by the terms of the ISO endorsement. Universal did not contact the VDBI with respect to the endorsement. Furthermore, Universal had no relevant contact with the VDBI after receiving the ISO circular and before issuing the Gerrish insurance

policy. A Universal interoffice memorandum made it clear that Universal was aware of the endorsement.

On September 1, 1984, while ISO's pollution endorsement was still in effect, Universal issued a general liability and automotive dealer insurance policy, the Unicover III policy, to Gerrish.

In April and May of 1985 Universal submitted to the VDBI multiple endorsements affecting pollution coverage under the Unicover III policy. After several exchanges between Universal and VDBI and subsequent to Vermont's claim against Gerrish, the endorsements were approved with the proviso that whenever Universal specifically excluded pollution coverage under an insurance policy an Individual Risk filing had to be made with the VDBI.

Procedural Background

Based on the original Unicover III policy issued to Gerrish and the endorsements and amendments filed by Universal, Universal claimed that it would not cover the costs of cleaning up the Woodstock East fuel spill. Universal claimed that it never amended the Unicover III pollution exclusions, that the Gerrish fuel spill was definitely excluded under the policy as originally written and, therefore, Gerrish was not covered.

Gerrish commenced this action in the United States District Court for the District of Vermont seeking a declaratory judgment that the Unicover III policy issued by Universal provided coverage for the gasoline cleanup claim asserted by Vermont.

Universal responded that the Unicover policy, which Universal claimed was unaffected by either Universal or ISO filings, excluded coverage of Gerrish's claim. Universal claimed that the VDBI had never withdrawn approval of the Unicover III policy as approved in 1980 and therefore continued use of that policy was appropriate. If the VDBI had established a practice of requiring pollution coverage in all insurance policies, urged Universal, not only was Universal unaware of the practice, but maintenance of such a practice was beyond the power of the VDBI. Universal also contended that the cleanup or "response" costs for the gasoline contamination were not tantamount to damages under the policy because they were equitable in nature, not legal under Vermont law. Finally, Universal contended that the "owned property" provision of Exclusion (k) found in the general liability part of the policy excluded coverage of the claim. Universal, therefore, maintained that it was not responsible for providing coverage for the gasoline cleanup.

The district court found that the Universal Unicover III policy as originally issued excluded Gerrish's claim. While the court concluded that VDBI had authority to establish practices with respect to insurance exclusions, the court did not base its decision on this holding. The court went on to rule that the Unicover III pollution exclusions were negated by the 1984 ISO pollution endorsement. Thus, the district court concluded that under Vermont law, which we must apply, *Erie v. Tompkins*, 304 U.S. 64 (1938), Gerrish was covered by the Unicover III policy as amended by the ISO, including pollution cleanup costs. Furthermore, the court found that the "owned property" exclusion did not bar the

claim. In sum, the district court granted Gerrish the declaratory judgment.

Universal appeals and reasserts on appeal the arguments raised below.

DISCUSSION

First we must determine whether the policy provided coverage to Gerrish for injury resulting from gasoline-related pollution.

Universal contends that Gerrish is not covered for this gasoline leak because as the district court held, the Unicover III policy as originally issued to Gerrish did not cover Vermont's claim, the VDBI never withdrew approval of the Unicover III policy and Universal never amended the pollution exclusions prior to Vermont's claim against Gerrish. Universal also raises an argument with respect to the practice of the VDBI in approving policies and requiring certain types of coverage. Universal claims that the VDBI lacks authority to withhold approval of policies until a specific type of coverage is provided. Universal urges that it was just such a practice of the VDBI that prompted ISO to file the pollution endorsement. What motivated the filing of the endorsement is irrelevant however. It is the effect of that endorsement that controls the outcome in this case.

We agree with the district court that the Universal Unicover III policy in the form in which it was issued to Gerrish did not cover Vermont's claim. The original policy language explicitly excludes from coverage the type of claim raised here. We conclude, however, that the

policy was amended by Universal's agent, ISO, to provide coverage for this claim. The basis for this conclusion is rooted in the law of agency.

Under general agency principles the following holds true:

> § 140. Liability Based upon Agency Principles
>
> The liability of the principal to a third person upon a transaction conducted by an agent- . . . may be based upon the fact that:
>
> (a) the agent was authorized;
>
> (b) the agent was apparently authorized; or
>
> (c) the agent had a power arising from the agency relation and not dependent upon authority or apparent authority.

Restatement (Second) of Agency § 140, at 349 (1958).

Universal signed an authorization in 1982 permitting ISO to file, on Universal's behalf, amendments to its general liability policies. Universal did not limit that Authorization with respect to these policies or to the Unicover III policy specifically, nor did Universal ever withdraw the Authorization prior to Vermont's claim against Gerrish. Although Universal typically amended the Unicover III policy independently, it did not reserve the exclusive right to alter the Unicover III policy. When Universal filed the Authorization in 1982, it implicitly empowered ISO to alter the Unicover policy.

The existence of an agency relationship may be shown in many ways. In an agency relationship, the

agent has the power "to subject his principal to liability for an act done in furtherance of the agency." *Young v. Lamson*, 121 Vt. 474, 476, 160 A.2d 873, 875 (1960) (citing *Ploof v. Putnam*, 83 Vt. 252, 255, 75 A. 277, 277 (1910)). "[T]he real test, as to third persons, is whether the act, however trivial, is done by one for another, with the knowledge of the person sought to be charged as master, with his assent, expressed or implied, even though there was no specific request on his part to do the act in question." *Young*, 121 Vt. at 477, 160 A.2d at 875 (interpreting law of agency with respect to operation of motor vehicles) (citing *Brown v. Gallipeau*, 116 Vt. 290, 293, 75 A.2d 694, 696 (1950)). In the instant case ISO clearly acted on behalf of Universal with Universal's knowledge and with the authority conferred by Universal. In sum, ISO was Universal's agent and was empowered to bind Universal.

Universal claims that even in an express agency context, absent reliance by a third party to the detriment of that third party, there can be no liability on the principal. In so arguing, Universal attempts to circumvent basic principles of contract and insurance law. The ISO endorsement was, in effect, part of the insurance contract between Universal and Gerrish. The ISO endorsement affected all policies issued after July 1, 1984. The Gerrish policy was issued on September 5, 1984, while the ISO endorsement was in effect. The ISO endorsement, therefore, affected the Gerrish policy and negated the original pollution exclusions therein set forth.

It is a basic tenet of insurance law that once an insurance contract is accepted by both parties, the parties are bound by it. *See* 1 *Couch Cyclopedia of Insurance Law*

§ 12:16, at 807 (Rev. 2d ed. 1984). An insured, absent fraud or misrepresentation, is bound by the terms of the policy and "cannot thereafter complain that he did not read or know its terms." *Id.* Likewise, the insurer is bound by those same terms, regardless of whether the insured is aware of them. The parties are bound to the terms of the policy on the formation of a contract of insurance. A contract is formed when the insured accepts a policy and pays the premium and the insurer accepts the premium. By accepting the policy and paying the premiums the insured agrees to the terms of the insurance contract. By the same token, when the insurer issues a policy and accepts payment for insurance coverage under that policy, the insurer agrees to assume the risks enunciated in the policy. *See* 6 *Couch Cyclopedia of Insurance Law* § 31:10, at 19-20 (Rev. 2d ed. 1985).

Applying these general rules of contract and insurance law to the instant case, we see that Gerrish was entitled to coverage for the State's pollution claim regardless of any lack of awareness on its part of the specific terms of the contract. The pollution endorsement filed by ISO affected all policies issued after July 1, 1984, including the Gerrish policy. Despite Gerrish's lack of awareness of its inclusion, the pollution endorsement was part of the Unicover III policy, approved by the VDBI, for which Gerrish contracted and on which Gerrish paid premiums. Universal failed to opt out of the endorsement prior to issuing the policy to Gerrish. It accepted the premiums tendered by Gerrish for the amended Unicover III policy. As already stated, Universal was undeniably aware of the endorsement. The contract of insurance

formed between Gerrish and Universal, therefore, included the ISO pollution endorsement.

Universal contends that because the ISO endorsement was inconsistent with the original policy and prior Universal amendments to it the Authorization did not apply to the endorsement. This argument is based on the inclusion in the Authorization which states:

> This Filing Authorization shall be deemed amended to the extent that any filing is made directly by [Universal] and is inconsistent with the filing of said Insurance Services Office.

Under Universal's interpretation, any ISO filing inconsistent with anything previously filed by Universal would be deemed amended by the relevant Universal filing. This explanation, however, is inconsistent with the ISO Authorization itself. ISO was empowered to make filings and to file amendments and endorsements on behalf of its members, including Universal. An "amendment" to a policy is, by definition, "a change for the better; improvement" or "a correction of errors, faults, etc." *Webster's New World Dictionary* 43 (2d College ed. 1970). A "change" or "correction" is necessarily different from or perhaps inconsistent with that which is being changed or corrected. Furthermore, the ability to amend implies the existence of some pre-existing filing to be amended. Thus, there had to be a policy in existence, whether filed by Universal or ISO, in order for ISO to amend a policy. The Authorization permitting ISO to file amendments would be eviscerated if we accepted Universal's interpretation and concluded that ISO was not permitted to amend the existing policies. We reject such an interpretation.

Universal's position also fails to recognize the time sequence implicit in the ISO Authorization. The Authorization is "deemed amended" when Universal makes a filing inconsistent with a filing by ISO. A Universal filing cannot be inconsistent with an ISO filing unless there is a pre-existing ISO filing at the time the Universal filing is made. In the instant case, Universal made no relevant filings between the date the ISO amendment was submitted to the VDBI for approval and the date of issuance of Gerrish's policy. Universal, therefore, made no filings inconsistent with ISO filings such that the Authorization should be deemed amended prior to the issuance of the policy to Gerrish.

We conclude that the district court correctly held that the ISO pollution endorsement applied to the Gerrish policy and afforded Gerrish coverage against the State's claims.

Universal next contends that the district court erred in concluding that the environmental response costs involved in the State's claim are "damages" as the term is used in the Unicover III policy and that the "owned property exclusion" in the policy was inapplicable. Universal bases its claim on the language of the policy. Coverage Part 950 – General Liability states, under the heading "Insuring Agreement," that Universal "will pay all sums which the INSURED legally must pay as damages . . . because of INJURY to which this Coverage Part applies." Exclusion (k), the "owned property" exclusion also contained in Coverage Part 950, states: "This insurance does not apply to: INJURY to property owned by, rented, or leased to, used by, or in the care, custody or control of the INSURED." Injury is defined in the policy

as "damage to . . . tangible property." Universal's interpretation of these portions of the policy and its technical reading of the terms result in its conclusion that environmental response costs are not sums that Gerrish must legally pay as damages because of injury, and that costs to clean up Gerrish's land are excluded under the policy. Universal's arguments are unpersuasive.

The term "damages" is not defined in the Unicover III policy issued to Gerrish. Vermont law provides some guidance on this issue however. Vermont law is clear that policies are to be interpreted in favor of complete coverage. *See City of Burlington v. Glens Falls Ins. Co.*, 133 Vt. 423, 424, 340 A.2d 89, 90 (1975). Limitations and exclusions in policies are to be strictly and narrowly construed. *Id.* We find no cases interpreting Vermont law, however, that determine whether environmental response costs or cleanup costs constitute damages. Other courts are split on this issue. *Compare, e.g., Avondale Indus. v. Travelers Indem. Co.*, 887 F.2d 1200, 1207 (2d Cir. 1989) (under New York law damages include cleanup costs), *and Ray Indus. v. Liberty Mut. Ins. Co.*, 728 F.Supp. 1310, 1314-15 (E.D. Mich. 1989) (under Michigan law "suit" includes environmental cleanup action and insurer must defend), *with Maryland Casualty Co. v. Armco, Inc.*, 822 F.2d 1348, 1352-54 (4th Cir. 1987) (cleanup costs not damages under Maryland law), *cert. denied*, 484 U.S. 1008 (1988). The question is further clouded by the fact that the damages must be "for injury," and "injury" is defined in the policy as "damage" to property.

In an earlier case we were required to construe under New York law the term "damages" in an insurance policy containing pollution exclusions similar to those in the

instant case. *See Avondale*, 887 F.2d 1200. In *Avondale* we concluded that the term "damages," when given its natural meaning, could include cleanup costs, particularly because an ordinary businessman reading the policy would believe that "damages" included such costs.

Vermont, like New York, requires that the language in an insurance policy be given its plain and ordinary meaning. *Kusserow v. Blue Cross-Blue Shield Plan of N.H.-Vt.*, 140 Vt. 328, 333, 437 A.2d 1114, 1117 (1981). The Unicover III policy states that Universal "will pay all sums which the INSURED legally must pay as damages . . . because of INJURY to which this Coverage Part applies." We conclude that the plain and ordinary meaning of this clause is that Universal agreed to pay all sums Gerrish was ordered by a court to pay, regardless of the technical, legal characterization of the particular judgment. Even if we conclude that the term "damages" is ambiguous, however, the result is the same because under Vermont law all ambiguities in an insurance contract must be construed in favor of the insured. *Sanders v. St. Paul Mercury Ins. Co.*, 148 Vt. 496, 500, 536 A.2d 914, 916 (1987). In this instance, construing the term "damages" in favor of Gerrish results in coverage under the policy. Thus, if Gerrish is ordered by a court to pay the environmental response costs associated with the gasoline leak, Universal must bear the financial burden. We believe that the Vermont courts would reach the same conclusion. *Cf. Bean v. Sears, Roebuck & Co.*, 129 Vt. 278, 282, 276 A.2d 613, 616 (1971) (repair and restoration costs may be a proper measure of damages under Vermont law).

The district court also correctly concluded that because property beyond that owned, used, or controlled by Gerrish was damaged, Exclusion (k) of Part 950 of the Unicover III policy did not apply. Universal disputes this, claiming that Gerrish failed to provide evidence that any other landowner suffered a loss of use of his property or diminution in property value as a result of the gasoline leakage. We find Universal's argument unpersuasive.

The pollution at issue in the instant case was, at the time of the district court decision, "a plume of petroleum product (dissolved hydrocarbons in groundwater) which is located in the subsurface strata of the Woodstock East property. It has migrated to an adjacent property of the Marble Bank as well as into the right of way for a public highway (Route 4)." It was also found that the pollution is entering a "natural drainage stream" flowing into the Ottauquechee River. Universal admits that the petroleum seepage may demonstrate "an imminent and substantial threat to the environment." The presence of the pollution in the drainage stream and Ottauquechee River and groundwater clearly represent actual damage to the surface and groundwater and deterioration of the groundwater quality both on and off of the Gerrish property. While the specific effects of this pollution migration have not been provided, such effects are not required in this declaratory judgment action. It is only proof of damage to property not owned, controlled or possessed by Gerrish that must be proffered. Gerrish has met this burden. Its claim is not barred by Exclusion (k). Universal, therefore, is responsible for the cleanup costs of the property damaged by the plume. This may require Universal to bear the cost to clean up the leakage on Gerrish's property for

the purpose of abating seepage to neighboring property. The cost of repairing Gerrish's property is inextricably linked to Vermont's claims. We agree with the district court that the cost of "on premises remedial work, as well as any off premises remediation, is not excluded by the language of exclusion (k)." 754 F.Supp. at 366.

CONCLUSION

We conclude that the ISO endorsement applied to the Gerrish policy. The endorsement negated Universal's pollution exclusions and required that Universal provide coverage to Gerrish for the State of Vermont's pollution claim. We further conclude that the environmental response costs fall within the definition of damages as that term is used in the insurance policy issued by Universal to Gerrish. In so holding, we do not pass upon the merits of Vermont's claims against Gerrish.

For the foregoing reasons, the judgment of the district court is affirmed.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

GERRISH CORPORATION, *et. al*, Woodstock East Woodstock, Vermont	:	
Plaintiff	:	Civil Action
v.	:	File No. 89-19
Universal Underwriters Insurance Company Kansas City, Missouri	:	(Filed Dec. 5, 1990)
Defendant.	:	

FINDINGS OF FACT, CONCLUSIONS OF LAW, OPINION AND ORDER

I. INTRODUCTION

In this Declaratory Judgment action, plaintiff, Gerrish Corporation (hereinafter "Gerrish or plaintiff") seeks a declaratory judgment, declaring that a liability insurance policy ("the policy") issued by Universal Underwriters Insurance Company (hereinafter "Universal, or defendant") to Gerrish, provides coverage for a petroleum pollution clean-up claim, asserted against Gerrish by the State of Vermont on May 2, 1985. Universal opposes plaintiff's petition and requests that the Court issue a declaratory judgment that the Policy does not provide coverage for plaintiff's claim. The case was tried to Court commencing October 24, 1990.

II. FINDINGS OF FACT

Jurisdiction and Venue

1. This action is filed under the Federal Declaratory Judgment Act, 28 U.S.C.A. § 2201 (West Supp. 1990).

2. Plaintiff, Gerrish d/b/a/ Woodstock East, d/b/a Gerrish Motors and d/b/a/ Scrub-A-Dub is a Vermont Corporation with a principal place of business in Woodstock, Vermont.

3. Defendant, Universal is a stock insurance company with its principal place of business in Kansas City, Missouri. Universal is licensed to engage in the business of selling insurance in the State of Vermont and has, for at least twenty years, submitted its insurance forms and rates for approval to the Vermont Department of Banking and Insurance and sold policies in Vermont.

Background

4. Plaintiff is the owner of a shopping center in Woodstock, Vermont, known as "Woodstock East". Kurt Gerrish (a shareholder of Gerrish) has owned a portion of the realty on which Woodstock East sits, since 1963 and obtained the rest of the property in fee simple on May 29, 1967. Mr. Gerrish conveyed all the property he owned, consisting of 7 acres, to Gerrish on May 29, 1968. The portion known as Woodstock East is approximately 4.8 acres.

5. Plaintiff has developed the Woodstock East property since 1968 and the property now includes approximately 15 retail stores and 8 apartments. Plaintiff also operates two other businesses on the property, one of

which is Gerrish Motors, an automotive dealership, and Scrub-A-Dub, a car wash and retail petroleum sales facility. Scrub-A-Dub and Gerrish Motors are corporate divisions of Gerrish. Scrub-A-Dub sold petroleum products at retail to customers of Gerrish Motors and others.

6. During 1972, Woodstock Structures, Inc. installed oil storage tanks at Woodstock East as a part of Scrub-A-Dub's retail sales business. Retail sales began during November 1972 and over the next year in excess of 75,000 gallons of petroleum were sold.

7. During November, 1973, Scrub-A-Dub discovered that approximately 4,785 gallons of gasoline had been lost due to either a gasoline spill or theft.

8. The tanks were air pressure tested to determine whether the tank system might be faulty. The tanks were thereafter excavated and a tank thought to be leaking was replaced. At that time, it was determined that the leak was actually caused by a cracked pipe fitting, which was also replaced. (Plaintiff's Exhibit 13 – an invoice for the fitting repair.) The tanks themselves had no evident leaks.

9. On September 8, 1975 Gerrish settled a claim against Woodstock Structures, Inc., the contractor for the gas island for Scrub-A-Dub, and Wyman, Inc., a subcontractor, for the then known damage resulting from the gas leak. Gerrish received $2,085.96 for the value of the lost gasoline product and released Woodstock Structures and Wyman from damages it sustained. (Plaintiff's Exhibit 65.)

10. The settlement did not include any payment for pollution clean-up. Between the date of settlement and

May 6, 1985, when Gerrish received the State's Pollution Claim, Gerrish had no knowledge that pollution contamination had resulted from the gasoline spill.

11. From the time of the gas spill in 1972-73 until this claim arose, there have been no material changes to the subsurface structure of the Woodstock East property except for the installation of a "French drain" in 1981 or 1982. The "French drain" is an underground drainage line which drains the property, in part, into a tributary of the Ottauquechee River.

12. On May 31, 1984, Gerrish leased its Woodstock East premises to Woodstock East Associates (a Vt. limited partnership) for a term of five years with an option to purchase. The option to purchase has not been exercised. Gerrish continues to hold title in fee simple to the leased property. (Plaintiff's Exhibit 69.)

13. On May 31, 1984, Gerrish also entered into other leases with Woodstock East Associates, leasing back a portion of the premises. Gerrish thereby retained ownership, possession and control of the Scrub-a-Dub facilities, including the gasoline islands, tanks, piping and underlying land. (Plaintiff's Exhibit 68.)

Pollution Claim by Agency

14. On May 2, 1985, the State of Vermont through the Agency of Environmental Conservation, ("Agency") notified plaintiff that Woodstock East was the source of petroleum pollution which was entering a "natural drainage stream" which "empties directly" into the Ottauquechee River. The migration of the material was

considered hazardous. Pursuant to Vermont Statute, the Agency gave notice that the State would investigate to determine the magnitude and extent of the petroleum pollution and take appropriate steps to minimize the harm to the public and the environment. Prior to the expenditure of State funds, the State notified plaintiff as a potentially responsible party that it could voluntarily take corrective measures under Agency direction to alleviate the pollution hazard. (Plaintiff's Exhibit 2.)

15. The State in its notice says that Marvin Wolf owns the property on which both businesses (Gerrish Motors and Scrub-A-Dub) are located. This statement is simply erroneous.

16. Although there have been other minor petroleum spills on the property over the years, the pollution giving rise to this claim is in all likelihood a result of the 1972-73 spill and the Court so finds.

17. Prior to the receipt of the State's Pollution Claim, Gerrish had no knowledge of any subsurface pollution contamination of the Woodstock East property resulting from the 1972-73 spill, and no one had asserted any claim for clean up or damages against Gerrish due to pollution contamination. Gerrish had no intention to clean up any subsurface pollution before the Agency's Pollution Claim arose.

18. On June 11, 1985, Gerrish demanded that Universal be responsible for all costs involved in monitoring and cleaning up the source of the pollution under the terms of a Universal insurance policy, No. 428584D, which had been issued to Gerrish with a policy period of September 1, 1984 to September 1, 1985. (Plaintiff's

Exhibit 2A, copy of the letter from Philip Johnson to Universal.) (Plaintiff's Exhibit 1, the Policy.)

19. Universal agreed to investigate the State's Pollution Claim under a reservation of Rights/non-waiver agreement dated June 18, 1985. (Plaintiff's Exhibit 4.)

20. Thereafter, Ground Water Technology, Inc. (GTI) was hired jointly by Aetna Insurance Co. (which provided coverage to a lessee of part of the premises) and Universal to investigate the pollution contamination.

21. Universal now maintains that it is not responsible to Gerrish under the policy for any damages for environmental clean-up incurred as a consequence of the State's Pollution Claim, and refuses to reimburse Gerrish for its expenses. (Plaintiff's Exhibits 17, 18, 19 and 20.) (See defendant's answer in this case.)

22. Pollution presently exists as a plume of petroleum product (dissolved hydrocarbons in groundwater) which is located in the subsurface strata of the Woodstock East property. It has migrated to an adjacent property of the Marble Bank as well as into the right of way for a public highway (Route 4). GTI Dec. 1988 Rprt. (Plaintiff's Exhibits 14, 14(k), 14(l) and charts.)

23. In addition to the pollution plume in the subsurface of the property, there are two areas of seepage of petroleum product into a tributary stream of the Ottauquechee River. One is near the opening of the "French Drain", which is on the north-westerly corner of the Woodstock East property. The other point of seepage is on the west side of Route 4, on property not owned by Gerrish. (Plaintiff's Exhibit 66.) At these seepage areas,

GTI has installed "collection boxes" in which both dissolved and free-phase hydrocarbons have been collected.

The Insurance Policy

24. The prototype of what Universal calls its Unicover III insurance policy, which is at issue here, was first approved by the Vermont Department of Banking and Insurance (VDBI) on May 19, 1980. Attached to the policy that was then approved was a Vermont State Amendatory Part (Edition 4-80). (Defendant's Exhibit A, pp. 289-291.)

25. Gerrish's Universal Unicover III Motor Vehicle Dealers policy was issued with the Vermont State Amendatory Part attached. (Edition 9-83.) (Plaintiff's Exhibit 1, p. 5.)

26. The pertinent coverages in the instant case are Part 500 Garage-Liability; Part 950 General Liability and Part 980 Umbrella coverage.

27. INJURY under all these Parts includes: "bodily injury, sickness, disease, or disability . . . or damage to or loss of use of tangible property."

28. The Gerrish 1984-85 Unicover III policy, (like the 1980 prototype), Part 500 Garage Coverage contained the following exclusionary language:

> Exclusions – This insurance does not apply to:
>
> . . .
>
> (m) INJURY caused by the dumping, discharge, or escape of irritants, pollutants or contaminants. This exclusion does not apply if the discharge is sudden and accidental;

> (n) INJURY caused by the discharge, release, or escape of any petroleum substance into or upon any body of water or water course, regardless of the nature of the discharge, release, or escape (whether accidental or not)
>
> . . . .

29. Part 950 General Liability Coverage contained the same exclusionary language, labelled (e) and (f) in that Part. The Umbrella Part 980 also included the same provisions, labelled (g) and (h).

30. The Vermont State Amendatory Part of the policy, as issued, deleted exclusions pertaining to pollution and contamination for any "AUTO insured by this policy and licensed or principally garaged in, or used for GARAGE OPERATIONS in Vermont:

> Coverage Part 500-GARAGE INSURANCE: (m) and (n)
> Coverage Part 900-BASIC AUTO INSURANCE: (g)
> Coverage Part 980-UMBRELLA: (g) and (h)."

31. The Vermont State Amendatory Part made no deletion with respect to pollution from any source other than an insured automobile, and no deletion of any kind was made of the pollution exclusionary language contained in the general liability coverage part.

32. As defendant points out, the original Unicover III specimen policy was revised numerous times by filings with the VDBI between the first filing in May, 1980 and the effective date of the Gerrish policy in September, 1984. (Defendant's Exhibits C-Q.)

None of those revisions pertained to the pollution exclusions or the Vermont State Amendatory Part.

33. In addition to the previously referenced pollution exclusions, the Gerrish policy has two exclusions in the General Liability Part 950 that are pertinent to the issue of coverage in this case:

> Exclusions – This insurance does not apply to:
> . . .
> (k) INJURY to property owned by, rented or leased to, used by, or in the care, custody or control of the INSURED . . . .
>
> (l) INJURY to premises after YOU transfer ownership or possession to another, if INJURY is caused prior to the transfer.

(Plaintiff's Exhibit 1.)

34. The Gerrish Universal policy as issued to the insured was in its pertinent parts, an "Occurrences" policy, providing coverage only for losses arising from injuries *occurring* during the policy period. (Plaintiff's Exhibit 1.)

35. Between its May 2, 1980 initial filing of its Unicover III policy and an April 1, 1985 filing which contained a certain pollution endorsement, (No 322), Universal *itself* did not make any filing with the Department which altered, amended or deleted the above-referenced exclusionary language.

Insurance Services Organization

36. Universal is a member of the Insurance Services Organization ("ISO"). ISO is an umbrella rating organization, which is owned by a number of insurance companies. ISO provides various services to its members and subscribers including drafting and filing of insurance forms with state insurance departments, which it can do on behalf of its member companies if given authority by the members to do so.

37. Universal has filed ISO Filing Authorization forms with the VDBI. The latest authorization bears the effective date of October 1, 1982 and remained effective at all times pertinent to this litigation. (Plaintiff's Exhibit 6.)

38. The ISO authorization form gives ISO express authority to act on Universal's behalf before the Department of Banking and Insurance. The authorization indicates that ISO has the authority to file "rates, rules, [and] forms" in several areas of insurance, including "general liability" insurance, with the VDBI on behalf of Universal, a "MEMBER or SUBSCRIBER of the INSURANCE SERVICES OFFICE."

39. The only exception to this authority, reserved by Universal is in the area of "personal auto" insurance. There is no exception in the ISO Authorization form filed by Universal pertaining to General liability or pollution exclusions for any states or Vermont specifically. (Plaintiff's Exhibit 6.) (Defendant's Exhibit DD.)

40. Universal's ISO Filing Authorization Form states that "[t]his Filing Authorization shall be deemed amended to the extent that any filing is made in your

office directly by the undersigned company and is inconsistent with the filing of said Insurance Services Office."

The History of the Pollution Exclusion

41. The Vermont Department of Banking and Insurance has changed its position at various times, as to whether insurance companies may exclude pollution coverage from their general liability policies.

42. From the mid 1970's through the end of 1982, the VDBI did not approve policies containing a pollution exclusion. This was merely Departmental policy; no regulation addressed this issue. Nevertheless, the Department did not "*knowingly* approve any form that contained any pollution exclusion unless a companion mandatory endorsement deleted that exclusion." (Feb. 8, 1990 letter of Paul Candage, Senior Insurance Analyst, VDBI, to Robert Manchester, Plaintiff's Exhibit 22.) During that time, form GL 01 11 (Edition 01-73) was the contamination or pollution exception endorsement used in Vermont.

43. Late in 1982, ISO filed a pollution liability policy for use by its members and subscribers, but did so on the VDBI's agreement to withdraw form GL 01 11. VDBI accepted a withdrawal of GL 01 11 as of January 1, 1983. Hence, the VDBI once again allowed pollution exclusions because it believed that separate pollution policies were available in Vermont.

44. Later in 1983, however, VDBI learned that the pollution liability policy was not widely available and therefore told ISO that VDBI intended to withdraw

approval of the pollution liability policy and to effectively reinstate form GL 01 11 pursuant to Vt. Stat. Ann. tit. 8, § 3541(c) (1984).

ISO 1984 Filing

45. Negotiations over the pollution coverage issue between ISO and the VDBI resulted in ISO's April 30, 1984 filing. This filing provided for a Vermont Pollution Liability exception Endorsement GL 01 54. (Plaintiff's Exhibit 9.) The Endorsement deleted the pollution exclusion and provided coverage for sudden and non-sudden pollution incidents on a modified claims-made basis subject to an aggregate limit.

46. Under Endorsement GL 01 54, "a claim . . . shall be deemed to have been made when written notice of such claim is received by the *insured* or by the company, whichever comes first."

47. The definition of "property damage" under the GL 01 54 Endorsement (includes, in part) "physical injury to or destruction of tangible property . . . . "

48. In addition to Endorsement GL 01 54, the April 30, 1984 ISO filing provided for two Pollution Exclusion Endorsements, GL 21 31 and GL 21 32, for cases where there was a "recognized hazard." For insureds' with recognized pollution hazards, the exclusions would totally negate pollution coverage on a "risk by risk" basis, if the insured either purchased a separate pollution liability policy or the insurer filed an Individual Risk Filing with VDBI. (Plaintiff's Exhibit 9.)

49. The April 30, 1984 filing stated that "these changes are applicable to all *policies* written on or after July 1, 1984." (Emphasis added.) (Plaintiff's Exhibit 9.)

50. After July 1, 1984, the VDBI allowed the equivalent of GL 01 54 (the ISO form) to be attached to policies issued in Vermont as long as the pollution exclusions were deleted. (Paul Candage letter to Robert Manchester, February 8, 1990, Plaintiff's Exhibit 22.)

51. At the time ISO made its April 30, 1984 filing, ISO was authorized to act as Universal's agent by virtue of the October 1, 1982 filing with VDBI.

52. The VDBI approved ISO's April 30, 1984 filing on May 2, 1984.

53. In a June 4, 1984 Circular, ISO notified all of its members that the Vermont Contamination and Pollution Endorsement GL 01 11, which previously deleted the pollution exclusion in the General Liability Policy, was withdrawn. Members were informed that a new Vermont contamination or Pollution Exception Endorsement (GL 01 54) had been developed which provided coverage for sudden and non-sudden pollution incidents on a claims-made basis subject to an aggregate limit.

54. The Circular stated that these changes were applicable to all policies written on or after July 1, 1984 and that GL 01 54 "*must* be attached to *all* policies providing general liability coverage in Vermont unless the coverage is specifically excluded." (ISO June 4, 1984 Circular, p. 2, Plaintiff's Exhibit 7.)

55. Universal received a copy of the ISO Circular on July 9, 1984. (Plaintiff's Exhibit 11.)

56. On an interoffice memorandum dated August 9, 1984, in reaction to the June 4, 1984 ISO Circular, Bob Oakes, a Universal Vice President, wrote, "we have no choice – these endorsements are MANDATORY. Also, we can't delete them or charge for the coverage without the Insured's permission . . . . How do you propose we get around this?" (Written notes between Al Birch and Bob Oakes on Plaintiff's Exhibit 11, p.7.)

57. The ISO Circular notified its members that Universal had to contact the Department before July 1, 1984 if Universal wanted to either have a different effective date or decided not to use the ISO endorsement form. Members of ISO were *not* required to file anything with the VDBI to use the new forms and effective date. Universal did not notify VDBI regarding a different effective date or any desire not to use the ISO form.

58. Universal made no contact or filing with VDBI between the time of its receipt of the ISO Circular and the time of plaintiff's receipt of the State's Pollution Claim on May 6, 1985, pertaining to pollution coverage, except for an April 1, 1985 filing.

Universal's 1985 Filing

59. On April 1, 1985, Universal submitted to the VDBI a proposed form of endorsement for its two Unicover III policies (Motor Vehicle Dealers and Automotive Parts Dealers). This filing is the first filing by Universal *itself* pertaining to pollution exclusions since the original filing of the prototype Unicover policy in May, 1980. The endorsements, Nos. 322 (Auto, Truck and Motorcycle

Dealers) and 322P (Parts Dealers) would provide coverage for "sudden and non-sudden pollution incidents on a claims-made basis."

60. The claims-made provision of Endorsement 322 would change the policy from an occurrence type policy to a claims-made policy. In other words, the "occurrence" provisions of the policy covered incidents occurring during the policy period regardless of when the claim was made. Under the new endorsement, "[a]ny claim shall be deemed to have been made when written notice of such claim is received by the INSURED or US, whichever comes first."

61. On May 12, 1986, Universal filed Endorsement No. 400 Pollution Exclusion with VDBI. This endorsement excluded pollution coverage entirely under any Universal policy to which it was attached:

> This policy shall not apply to any INJURY arising out of the actual, alleged, or threatened discharge, dispersal, release, or escape of pollutants; or to any loss costs or expense arising out of any governmental direction or request to monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants.

(Plaintiff's Exhibit 5, p. 756.) The VDBI initially disapproved Endorsement 400 on June 27, 1986, stating that VDBI "did not allow the Pollution Hazard to be routinely excluded. Pollution coverage must be *provided* unless excluded by means of an Individual Risk filing submitted to this Department *each time* it is attached to a policy." (Defendant's Exhibit S, p. 740.)

62. In response to the Department's disapproval, Universal drafted Endorsement 402, which was the same as Endorsement 400 except for the addition of a place for the insured's acknowledgement. Universal assumed that if the insured signed and Universal filed the endorsement with VDBI, such an Endorsement would meet the requirements of an Individual Risk filing. (Defendant's Exhibit S, p. 739.)

63. On September 23, 1986, the VDBI disapproved Endorsement 402 even with the space for the insured acknowledgement. The VDBI explained that it needed Universal's agreement that the endorsement would "*not* be attached to every policy, even with the insured's signature. It may be used *only* when there is a *recognized exposure* which must be described to this Department." (Defendant's Exhibit S, p. 738.)

64. On October 13, 1986, Universal explained to the VDBI that virtually all of their accounts had some "recognized pollution exposure" as most had underground fuel tanks and therefore, Universal was in a position of having to exclude coverage. (Defendant's Exhibit S, p. 742.)

65. On November 5, 1986, the VDBI approved Endorsement 402 provided that whenever the pollution hazard is excluded, an Individual Risk filing must be made with the Department. Underneath the form, Ed Mason (a Vice President of Universal) made a notation on November 13, 1986, that says "[t]his *means* we send a copy of the 402 signed by the Insured to the Vt. Insurance Dept." (Defendant's Exhibit S, p. 734.)

CONCLUSIONS OF LAW, OPINION AND ORDER

This is a declaratory judgment action in which plaintiff, Gerrish Corporation, seeks a declaration that a liability insurance policy issued by defendant, Universal Underwriters Insurance Company, provides coverage for a petroleum pollution clean-up claim asserted against plaintiff by the State of Vermont on May 2, 1985. Defendant opposes plaintiff's petition and requests a declaration that the policy does not provide coverage for plaintiff's claims.

The underlying facts are that plaintiff owned property in Woodstock, Vermont, which contained gasoline storage tanks used in connection with a retail gasoline sales operation. Certain plumbing associated with those tanks leaked petroleum products in 1972, or 1973, which petroleum has migrated since that time off plaintiff's property to at least one adjacent property. Petroleum contamination is also bleeding into a stream, which is a tributary of the Ottauquechee River.

In May of 1985, the State of Vermont through its Agency of Environmental Conservation, notified plaintiff that the Agency had determined that a petroleum product emanating from plaintiff's property is entering a natural drainage stream, which empties into the Ottauquechee River. The State also expressed its intention to investigate and mitigate the situation and seek to recover the costs from responsible parties. At the same time, the State offered plaintiff the opportunity as a potentially responsible party to take its own steps toward investigation and mitigation.

Plaintiff received the notification on May 6, 1985 and on June 11, 1985 transmitted its demand to defendant that it should take responsibility for all costs of monitoring and cleaning up the contamination under the terms of the insurance policy at issue in this case, which policy was in effect at the time the claim was made.

Defendant originally investigated the claim under a reservation of rights and eventually denied coverage altogether, claiming that the policy provided no coverage for this type of contamination because of the application of various exclusions in the policy.

Plaintiff acknowledges that the policy as issued contained certain exclusionary language, but contends that: (a) the exclusions do not apply to the injury which occurred in this case, or (b) that the exclusions have been deleted by an amendment to the policy, which was effective July 1 of 1984, or (c) that an amendment to the policy occurred in May of 1985, which provides coverage for plaintiff's claim.

This Court rejects plaintiff's contention (a) and holds that the language of the policy as issued excluded coverage. There is no need to reach plaintiff's contention (c) in view of the Court's holding with regard to contention (b), which is, that an amendment to the policy did occur on July 1st of 1984, which amendment applies to the policy which issued in September, 1984, and which provides coverage for the precise claim made by plaintiff in this case.

This Court has diversity jurisdiction over this declaratory judgment action pursuant to 28 U.S.C.A. § 1332(a)(1) (West Supp. 1990).

We will first discuss defendant's view that there are general exclusions in the policy which defeat coverage regardless of the existence or non-existence of specific pollution exclusions.

Universal contends, in part, that coverage under the policy is excluded by exclusions (l) and (k) in the general liability coverage part.

Exclusion (l) provides that there is no coverage for: "INJURY to premises after YOU transfer ownership or possession to another, if INJURY is caused prior to the transfer." In fact, although Gerrish leased to another entity at one point, it immediately leased back and has maintained ownership, possession and control of the property from which the pollution emanates throughout the time when the pollution occurred and through the time when the claim arose during the policy period. Accordingly, exclusion (l) under the General Liability Coverage Part 950 is inapplicable.

Exclusion (k) negates coverage for "INJURY to property owned by, rented or leased to, used by, or in the care, custody or control of the INSURED . . . . " Defendant urges that this exclusion applies because the contamination in this case originates on plaintiff's property and constitutes damage to that property.

Vermont law provides that policy terms in an insurance contract should be interpreted consistent with the purpose of providing coverage, therefore, limitations and exclusions should be strictly construed. *City of Burlington v. Glens Falls Ins. Co.*, 133 Vt. 423, 424, 340 A.2d 89, 90 (1975).

In this case, the "Injury" (damage to property) from pollution includes not only damage to the Gerrish property, but also includes potential damage to adjacent landowners including the Marble Bank and present damage to a stream, which runs to the Ottauquechee. We hold that the claim giving rise to this case encompasses injury to property not owned by the plaintiff. Exclusion (k) excludes injury to property owned by the insured. It might be necessary to do remedial work on the insured's property in order to stop injury to the property of others. The cost of such on premises remedial work, as well as any off premises remediation, is not excluded by the language of exclusion (k).

The State of Vermont has the authority to regulate pollution contamination of groundwater and the waterways and can recover clean-up costs. Vt. Stat. Ann. tit. 10, §§ 1283, 1390-1410 (Supp. 1990).

Defendant contends that clean-up costs or "response costs" in response to State Agency action under Title 10, Section 1283 of the Vermont Statutes are not "damages" under the policy. In the beginning of the General Liability Coverage Part, the policy states that the Insurer "will pay all sums the INSURED legally must pay as damages . . . because of INJURY." The policy also provides that Universal has a "duty to defend any suit asking for these damages." The question is whether clean-up costs constitute legal damages or are remedial and restorative and therefore only equitable in nature. This Court finds that clean-up costs constitute damages within the meaning of the policy. Legal authority on this issue is split and

there are no Vermont cases on the issue.[1] However, particularly in light of *Avondale Indus. Inc. v. Travelers Indem. Co.*, 887 F.2d 1200 (2d Cir. 1989), *cert. denied*, 110 S. Ct. 2588 (1990) (New York law), this Court believes that the Vermont Supreme Court would find that pollution clean-up costs are damages under the policy in this case, and we so hold.

In *Avondale*, Avondale Industries was sued by neighboring property owners for personal injury and property damage caused by pollutants (petroleum products and chemical compounds), emanating from a dump site in Louisiana. Avondale's insurance policy had similar pollution exclusions to plaintiff's policy. Avondale was sued

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[1] Cases holding that environmental clean-up costs or response costs are covered under a general liability policy include: *Ray Indus. Inc. v. Liberty Mut. Ins. Co.*, 728 F. Supp. 1310, 1314 (E.D. Mich. 1989); *Federal Ins. Co. v. Susquehanna Broadcasting Co.*, 727 F. Supp. 169, 174 (M.D. Pa. 1989), *order amended by*, 738 F. Supp. 896 (M.D. Pa. 1990); *National Indem. Co. v. United States Pollution Control Inc.*, 717 F. Supp. 765, 766-67 (W.D.Okla. 1989); *Intel Corp. v. Hartford Accident and Indem. Co.*, 692 F. Supp. 1171, 1186-93 (N.D. Cal. 1988); *New Castle County v. Hartford Accident and Indem. Co.*, 673 F. Supp. 1359, 1365-66 (D. Del. 1987); *Township of Gloucester v. Maryland Casaulty [sic] Co.*, 668 F. Supp. 394, 398-400 (D.N.J. 1987). Cases finding clean-up or response costs are not covered damages include: *Maryland Casualty Co. v. Armco Inc.*, 822 F.2d 1348, 1352-54 (4th Cir. 1987), *cert. denied*, 484 U.S. 1008 (1988) (Maryland law); *Cincinnati Ins. Co. v. Milliken and Co.*, 857 F.2d 979, 980-81 (4th Cir. 1988) (South Carolina law); *Mraz v. Canadian Universal Ins. Co.*, 804 F.2d 1325 (4th Cir. 1986) (Response costs are not property damages under CERCLA); *United States Fidelity & Guar. Co. v. Morrison Grain Co.*, 734 F. Supp. 437, 449-50 (D. Kan. 1990); *Verlan, Ltd. v. John L. Armitage & Co.*, 695 F. Supp. 950, 954-55 (N.D. Ill. 1988).

by private individuals near the dump site and received a "demand" letter from the Louisiana State Department of Environmental Quality demanding that Avondale submit a plan for remedial action at the site and informing Avondale that it was a potentially responsible party.

The Second Circuit found that the insurer was obliged to defend Avondale in private litigation and in the public administrative proceeding. The Court also held that "damages" included "remedial costs that may be imposed on Avondale by the State of Louisiana." 887 F.2d at 1207. The Court expressed concern with public interest and the prompt cleanup of the hazardous waste and mentioned a report that found that private remedial effort was quicker and less expensive than a government sponsored program. *Id.* at 1206.

Furthermore, the Vermont Supreme Court has found that in a property damage case: "[I]f the injury is temporary in the sense that restoration can cure the harm, the reasonable cost of repair may serve the need and provide adequate and fair compensation." *Bean v. Sears, Roebuck & Company*, 129 Vt. 278, 282, 276 A.2d 613, 616 (1971). *Bean* involved a suit where plaintiffs sued defendant for faulty installation of an oil furnace which resulted in pollution of the water supply on plaintiff's farm.

Under Vermont law, language in an insurance policy must be given its plain and ordinary meaning. *Kusserow v. Blue Cross-Blue Shield Plan of N.H.-Vt.*, 140 Vt. 328, 333, 437 A.2d 1114, 1117 (1981). Black's Law Dictionary (5th ed. 1979) defines "damage" as

> Loss, injury, or deterioration, caused by the negligence, design, or accident of one person to

> another, in respect of the latter's person or property. The word is to be distinguished from its plural, "damages", which means a compensation in money for a loss or damage.

The policy defines "INJURY" as "damage to . . . tangible property." Environmental contamination is an injury or damage to tangible property and the monetary damages (clean-up costs) that flow from that property damage are recoverable as damages Gerrish legally must pay.

Even if this Court were to determine that the term "property damage" becomes ambiguous when considering environmental contamination, (which it does not), ambiguities in an insurance contract must be construed in favor of the insured. *Sanders v. St. Paul Mercury Ins. Co.*, 148 Vt. 496, 500, 536 A.2d 914, 916 (1987). ("Ambiguity in policy language should be resolved in favor of the insured since the insurer is in a far better position to avoid latent ambiguity in the text of the policy.") (citing *Town of Troy v. American Fidelity Co.*, 120 Vt. 410, 417, 143 A.2d 469, 474 (1958).

We now turn to what we have earlier called plaintiff's contention (a), that is, that the language of the policy as it was originally issued provided coverage.

The Universal policy as it issued to plaintiff effective September 1, 1984 contained exclusions attached to both the garage coverage (Part 500) and the general liability coverage (Part 950) stating that the insurance in each of those parts did not apply to:

> INJURY caused by the dumping, discharge, or escape of irritants, pollutants, or contaminants.

> This exclusion does not apply if the discharge is sudden and accidental; . . .
>
> INJURY caused by the discharge, release, or escape of any petroleum substance into or upon any body of water or water course, regardless of the nature of the discharge, release, or escape (whether accidental or not) . . . .

There is a developing body of law concerning the meaning of "sudden and accidental" in this type of case (*See*, 7A J. Appelman, Insurance Law and Practice § 4499.05) (Berdal ed. 1979 & Supp. 1990). However, we need not address that issue since the exclusion barring recovery for injury caused by a discharge "into or upon any body of water or water course" applies in this instance. The very reason for this claim is the escape of a petroleum substance into a tributary of the Ottauquechee River. Accordingly, we hold that the policy as initially issued excluded coverage on that basis.

The crux of the dispute in this case, however, is whether the policy as written controls plaintiff's claim, or whether instead an amendment to the policy existed which provided coverage at the time the claim was made. To resolve this dispute, we must first look at the April 30, 1984 filing by Insurance Services Organization (ISO) to determine whether it impacts the Gerrish policy.

At the time of the April 30, 1984 filing, ISO was authorized to act as Universal's agent by the October 1, 1982 filing with VDBI. ISO had the authority to act on behalf of its member insurers under Vermont law. Vt. Stat. Ann. tit. 8, § 3541(a) (1984). ("[T]he filing required by this subsection may be made by rating organizations

on behalf of its members and subscribers; but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.") (*See also* VDBI Regulation V-(D), Plaintiff's Exhibit 50, p. 2.)

The April 30, 1984 filing by ISO was applicable to policies written on or after July 1, 1984 and, quite clearly, was intended to delete any pollution exclusions and provide coverage for both sudden and non-sudden pollution incidents, in all policies to which the filing applied, on a claims-made basis. In other words, if the ISO filing applied to policies written by Universal on or after July 1, 1984, it would provide pollution coverage to any claims arising during the policy period for which the Company received a notice of claim. In this case, since the plaintiff's policy period was September 1, 1984 to September 1, 1985 and the claim arose in May of 1985, with notice given to the Company in June of 1985, pollution coverage exists if the ISO amendment is applicable to the Universal policy.

Universal contends in this litigation that the ISO filing is not applicable to its policy for the reasons that: (1) the Gerrish policy is part of what the Company characterizes as its Unicover III Program, which it maintains is independent of anything that ISO may have done and was, therefore, immune from any impact of the April 30th filing; (2) the ISO filing could not apply because the language of that filing would be ambiguous if one attempted to incorporate it into the Unicover III policy (it does not fit the "structure" of the policy); (3) it had no actual knowledge of the VDBI policy prohibiting pollution exclusions at that time and no knowledge of the ISO

filing; and (4) VDBI had no power to implement such a policy without doing so through the Administrative Procedures Act requiring notice and comment by insurers. Addressing each of defendant's arguments in order, we rule as follows.

Universal certainly could have isolated its Unicover III policy from the impact of any ISO filings by notifying the VDBI that it was doing so. In fact, VDBI Regulation 81-03, Section XII provides that:

> [A]ny insurer not electing to adopt a rating organization filing shall be considered as having adopted an independent filing on its own; and is, thereafter, individually subject to Vermont's statutory and regulatory filing requirements. Furthermore, such an insurer must *inform the Department in writing* that its filing authorization with the rating organization has been so changed.

(Plaintiff's Exhibit 50, p.10 (emphasis added).)

Also, VDBI Regulation 81-03, Section VIII provides for "Exception" filings and states that an insurer who has authorized a rating organization to file on its behalf "may submit exceptions to that filing authorization for Departmental consideration in connection with any insurance program, rule, rate(s), policy, form and/or line of insurance . . . . " (Plaintiff's Exhibit 50, p. 7.)

Further, Universal could have indicated on its ISO filing authorization form that it reserved an exception to the filing authorization covering the Unicover III policy, or the entire Unicover Program much as it did except from the authorization any coverages concerning personal auto. (Plaintiff's Exhibit 6.) Furthermore, Title 8,

Section 3451(a) of the Vermont Statutes specifically reserved the right to Universal (and all other insurers) to modify, amend, withdraw or otherwise limit the authority, which it granted to ISO. Universal did none of these things. Universal seems to contend, however, that the VDBI should have concluded that its Unicover III policy was not to be amended by ISO filings because Universal itself had historically done independent filings in connection with the Unicover policy. Universal's position would impose an obligation on the Department to somehow limit the authority of ISO on the basis of an historical practice, which the Department should have guessed at in the face of the clear written authority which existed for ISO to make filings on behalf of its members and specifically on behalf of Universal except with regard to personal auto insurance. This is simply not a sound position for the Company to take.

Universal's second contention is that the 1984 ISO filing could not apply because to do so would create ambiguities. In fact, there was no ambiguity in the *language* of the ISO filing, which stated: "On behalf of our member and subscriber companies, we hereby enclose the captioned revision. (Note there is no reservation with regard to any member.) And later "these changes are applicable to all policies written on or after July 1, 1984." (Once again, no reservation as to the policies to which coverage would apply.) Further, on a page headed "*Contamination or pollution exception* (Vermont)," the filing provides: "It is agreed that the exclusion relating to the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or

pollutants is deleted." Later, on a page referring to general liability coverage, the following language appears:

> CONTAMINATION OR POLLUTANTS EXCEPTION ENDORSEMENT GL 01 54
>
> Attach Contamination or Pollution Exception Endorsement GL 01 54 to all policies issued in Vermont providing general liability coverage. This endorsement affords coverage for sudden and non-sudden pollution incidents on a claims-made basis, subject to an aggregate limit . . . . This endorsement is to be attached without charge unless written application for a charge, with the consent of the insured is made to the Commissioner pursuant to the requirements of the Vermont Statutes.

The filing and the endorsement language are clear and unambiguous and could certainly have been attached to the Universal Unicover III policy as an endorsement, which would eliminate the pollution exclusion provisions contained in the general liability part of that policy.

There *is*, however, reference in the ISO filing to amendments to provisions entitled "Coverage A-Bodily Injury Liability" and "Coverage B-Property Damage Liability". Those coverages (A and B) did not exist in the Unicover III policy at the time, suggesting to Universal that at least that part of the filing could not apply to its policy and would have been rejected by VDBI, if filed by Universal.

That may be, however, the filing was not by Universal. It was by Universal's agent "on behalf of our [ISO's] member and subscriber companies . . . " to be "applicable to all policies written on or after July 1, 1984." (Plaintiff's

Exhibit 9, ISO 1984 filing.) Universal, of course, is bound by the acts of its express agent done in furtherance of the agency. *Young v. Lamson*, 121 Vt. 474, 476, 160 A.2d 873, 875 (1960); *see also Costa v. Volkswagen of Am.*, 150 Vt. 213, 215 n.1, 551 A.2d 1196, 1197 n.1 (1988), *overruled on other grounds, Gochey v. Bombardier, Inc.*, 572 A.2d 921 (Vt. 1990); Restatement (Second) of Agency § 140 comment a (1958) ("principal is subject to liability upon a transaction conducted by [it's] agent"). Whatever ambiguities may have been created by Universal's agent certainly can not be applied to the detriment of Universal's insured. In any event with regard to the general liability section of the policy, there was no ambiguity whatsoever.

Universal also contends that the language of endorsement GL 01 54, if applicable would only delete exclusion (e) of the policy (injury caused by dumping pollutants) and not exclusion (f) of the policy (release of petroleum substances into streams). We are at a loss to determine why this should be the case. The language of the filing says that "the exclusion relating to the discharge . . . of liquids or gases, . . . contaminants or pollutants is deleted." The endorsement applies with equal impact to both exclusions.

Universal's third argument is that it had no knowledge of the VDBI policy, which during the time period from July 1, 1984 until the present, required pollution coverage in all policies either by deleting exclusions, or attaching the equivalent of the ISO form GL 01 54 providing pollution coverage on a modified claims-made basis except in individual risk or "risk by risk" situations. (Plaintiff's Exhibit 22.) Universal also contends that it had no knowledge of the ISO April 30, 1984 filing.

In fact, it is abundantly clear that *ISO* was well aware of the VDBI policy regarding pollution exclusions. In fact, during the late 1983 and early 1984 time period, ISO engaged in extensive negotiations with VDBI over that very issue, ultimately resulting in the April 30, 1984 filing. For purposes of dealing with VDBI, ISO had an agency relationship with Universal. Accordingly, even if Universal had no actual knowledge of the Department policy, it is charged with constructive knowledge of the information, which was known to ISO. *See Estate of Sawyer v. Crowell*, 151 Vt. 287, 291, 559 A.2d 687, 690 (1989); *Solomon v. Design Dev., Inc.*, 143 Vt. 128, 131, 465 A.2d 234, 236 (1983).

Any contention that Universal was unaware of the ISO action has even less merit. Plaintiff's exhibit 11 is a circular dated June 28, 1984 sent by ISO to Universal clearly disclosing the filing and all of its particulars along with various Universal documents reacting to the information. The circular

> announced the approval of Vermont contamination or pollution exception endorsement GL 01 54. This endorsement provides coverage for sudden and non-sudden pollution incidents on a claims-made basis subject to an aggregate limit.

The circular also indicates "that these changes were applicable to *all* [emphasis added] policies written on or after *July 1, 1984.*" It goes on to state that:

> If you have authorized us to file on your behalf and decide:
>
> . . .

> *not* to use this revision, you should notify the Vermont Insurance Department prior to our effective date [which is July 1, 1984].

An inter-office memorandum from Ed Mason (Vice President of Universal) dated August 9, 1984 notifies Bob Oakes (another Universal Vice President) that:

> [a]s I read this they [referring to ISO] are requiring an endorsement providing coverage for "sudden and non-sudden pollution incidents on a claims-made basis subject to an aggregate limit."

(Plaintiff's Exhibit 11, p. 7.) Al Birch of Universal, in a handwritten note to Bob Oakes and Ed Mason on the same memorandum, expressed his wish not to convert to claims-made coverage because "[i]t would be inconsistent with GL & represents some negative future implications." Mr. Oakes' handwritten reply was: "Al – we have no choice – these endorsements are MANDATORY. Also, we can't delete them or charge for the coverage without the insured's permission. We're even required to write it on a claims first made basis. How do you propose to get around this?"

Despite the circular, Universal did not "notify the Vermont Insurance Department prior to [or after the] effective date that it had decided not to use the revision". This Court holds that the provisions of the April, 1984 ISO filing and specifically endorsement GL 01 54 became a part of all Universal policies issued in Vermont after July 1, 1984 until June 21, 1985, when Universal's Unicover III Endorsement 322 was approved by VDBI.

The coverage provided by the April 30, 1984 filing became a part of the coverage provided to Gerrish even though the language was not included in the policy as issued by virtue of Title 8, Section 3541 of the Vermont Statutes and the CONFORMING TO LAW provision of the policy. Section 3541 prohibits issuance of a policy in Vermont, until the form has been approved by the Commissioner. Upon approval, the ISO endorsement deleted the pollution exclusion language in Universal's General Liability coverage. In order to conform to law then, the policy provided coverage by deletion of the exclusions. As a matter of law, Universal was required to provide the coverage once the ISO filing had been approved as to all general liability policies issued in Vermont after July 1, 1984.

Defendant also contends that any obligation, which it might have to provide pollution coverage in this case, arose as a result of an unauthorized or *ultra vires* policy of the Vermont Department of Banking and Insurance. Universal contends that VDBI had no authority under the statutory scheme existing in Vermont, to impose a departmental policy such as existed in this case, namely, that at various periods of time the VDBI would not approve policies which did not provide pollution coverage, or which excluded such coverage in all instances. Since the Department did not go through the procedures set out in the Vermont Administrative Procedures Act for the adoption of Regulations, it is contended that no authority existed. This position on the part of Universal ignores the natural impact of the authority the Department *did* have under Title 8, Section 3541 of the Vermont Statutes, which gives the Commissioner of Banking and Insurance the

authority to either approve, or disapprove forms of coverage which are to be sold to insureds in the State of Vermont. If the Department decides as a matter of policy that it will not approve certain types of coverage, or exclusions (for example policies containing pollution exclusions), it need not wait for filings and reject them on a policy by policy basis. As a practical matter, the sensible approach, and the approach that the Department took in this case, was to let it be known what it intended to do with regard to filings pertaining to pollution coverage so that the insurance industry could react and negotiate with the Department as to the type of form which would be approved for use in Vermont.

In any event, the argument that this action was *ultra vires* is of no avail to defendant in this case. Universal's agent (ISO) voluntarily negotiated with the Department and ultimately decided to file endorsement GL 54 01, which provided pollution coverage in general liability policies. Since ISO chose to take that approach and Universal is bound by ISO's actions on its behalf, Universal's suggestion that the Department acted outside of its authority is of no avail. A challenge to the Department's authority was available to defendant, or to ISO, prior to ISO's filing. In fact, a statutory hearing process was available for that purpose, but not at this late date.[2]

Having determined that ISO's April, 1984 filing provided pollution coverage to plaintiff, it is not necessary for the Court to rule on plaintiff's argument that Universal's 1985 amendment to the Unicover III policy provides

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[2] Vt. Stat. Ann. tit. 8, §§ 3541(b), (c) (1984)

coverage for this claim. Therefore, we make no ruling in that regard.

On the basis of the foregoing opinion, the Court issues the following ORDER:

The language of endorsement GL 01 54 is incorporated into the general liability section of Universal Underwriters Insurance Company policy number 428584D issued to the plaintiff Gerrish Corporation. The provisions of that endorsement afford coverage under the policy for the claim made by plaintjff in June of 1985 in response to the Vermont Agency of Environmental Conversation [sic] communication to Kirk Gerrish dated May 2, 1985. The property damage coverage referred to in endorsement GL 01 54 and the "INJURY" to property provisions in the general liability insurance coverage part of the Universal policy cover the clean-up costs asserted by the Vermont Agency of Environmental Conservation as well as the costs of investigation and defense of that claim. Any environmental harm to the State's waterways, which has arisen, or may arise out of this claim, constitute "damage to or loss of use of tangible property" under the policy. Coverage is provided for Gerrish under both the general liability part 950 and the umbrella part 980 of the Universal policy.

Dated at Burlington in the District of Vermont, this 4th day of December, 1990.

/s/ Fred I. Parker
Fred I. Parker
District Judge

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

GERRISH CORPORATION, *et al*, Woodstock East Woodstock, Vermont Plaintiff v. Universal Underwriters Insurance Company Kansas City, Missouri Defendant.	:	Civil Action File No. 89-19 (Filed Dec. 7, 1990) (Received Dec. 11, 1990)

ERRATA ON OPINION AND ORDER
FILED DECEMBER 5, 1990

Page 34, line 8 – delete "Conversation" and insert "Conservation" in place thereof.

Dated at Burlington in the District of Vermont, this 7th day of December, 1990.

/s/ Fred I. Parker
District Judge

United States District Court

_____ DISTRICT OF VERMONT

GERRISH CORPORATION, et al
Woodstock East
Woodstock, Vermont

V.

UNIVERSAL UNDERWRITERS INSURANCE CO.,
Kansas City, Missouri

JUDGMENT IN A CIVIL CASE

(Filed Dec. 6, 1990)

(Received Dec. 7, 1990)

CASE NUMBER: 89-19

_ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

The language of endorsement GL 01 54 is incorporated into the general liability section of Universal Underwriters Insurance Company policy number 428584D issued to the plaintiff Gerrish Corporation. The provisions of that endorsement afford coverage under the policy for the claim made by plaintiff in June of 1985 in response to the Vermont Agency of Environmental Conservation communication to Kirk Gerrish dated May 2, 1985. The property damage coverage referred to in endorsement GL 01 54 and the "INJURY" to property provisions in the general liability insurance coverage part of the Universal

policy cover the clean-up costs asserted by the Vermont Agency of Environmental Conservation as well as the costs of investigation and defense of that claim. Any environmental harm to the State's waterways, which has arisen, or may arise out of this claim, constitute "damage to or loss of use of tangible property" under the policy. Coverage is provided for Gerrish under both the general liability part 950 and the umbrella part 980 of the Universal policy.

December 6, 1990
Date

RICHARD PAUL WASKO
Clerk

/s/ illegible
(By) Deputy Clerk

United States Court of Appeals

FOR THE

Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 29th day of November one thousand nine hundred and ninety-one.

Present: HON. ELLSWORTH A. VAN GRAAFEILAND,
HON. THOMAS J. MESKILL,
HON. JOSEPH M. MCLAUGHLIN,
Circuit Judges,

GERRISH CORPORATION, doing business as Gerrish Motors, doing business as Scrub-a-Dub, Plaintiff-Appellee, V UNIVERSAL UNDERWRITERS INSURANCE COMPANY, Defendant-Appellant.	Docket No. 91-7008 (Received Dec. 5, 1991) (Filed Nov. 29, 1991)

A petition for a rehearing having been filed herein by Defendant-Appellant, Universal Underwriters Insurance Company.

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

/s/ Elaine B. Goldsmith
Elaine B. Goldsmith
Clerk

Supreme Court of the United States

No.

A-602

Gerrish Corporation, doing business as
Gerrish Motors, doing business as
Scrub-a-Dub,

Petitioner

v.

Universal Underwriters Insurance Company

ORDER

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and included March 29, 1992.

/s/ Clarence Thomas
Associate Justice of the Supreme
Court of the United States

Dated this 20th
day of February, 1992.

§ 10. [Powers denied the several states]

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws; and the net Produce of all Duties and Imports, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

AMENDMENT V. **[Criminal indictment; double jeopardy; self incrimination; due process; compensation for taking private property]**

No persons shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV.

§ 1. [Citizens; privileges and immunities; due process; equal protection]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without the due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2. [Representatives apportioned]

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

§ 3. [Rebellion disqualifies from office; removal of disability]

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

§ 4. [Public debt; debts and claims incurred in aid of rebellion]

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

§ 5. [Enforcement powers]

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Vermont Statutes Annotated, Title 3, Section 801.

§ 801. Short title and definitions

(a) This chapter may be cited as the "Vermont Administrative Procedure Act."

(b) As used in this chapter:

(1) "agency" means a state board, commission, department, agency, or other entity or officer of state government, other than the legislature, the courts, the Commander in Chief and the Military Department, authorized by law to make rules or to determine contested cases;

(2) "contested case" means a proceeding, including but not restricted to rate-making and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing;

(3) "license" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law;

(4) "licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license;

(5) "party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party;

(6) "person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency;

A. I don't believe it was in stopping right there. It was asked in a variety of ways where other things after that were asked.

Q. We'll talk about those variety of ways in just a second, Doctor, but as far as that particular question, would you agree with me that is a pretty simple question [p. 1254] pretty simple, straightforward question, isn't it, Doctor?

A. Your question?

Q. Yes.

A. Yes, it is pretty simple, I would say.

Q. But you didn't ask that, did you?

A. There were a lot of questions we didn't ask. We could go on in finitum. The people spent almost an hour filling out questionnaires with lots of different questions.

Q. I'm not a social scientist, Doctor, but it seems to me if you want to find out what the average person in our community thinks about that film, whether it is acceptable or not, you simply ask them –

MR. KLEIN: Your Honor, I object to him making a speech. If he wants to ask a question, let him ask a question instead of making a speech to the jury.

THE COURT: I think we need to ask a question if you have one.

Q. Do you think that would be an appropriate question to ask these people in light of what you know these jurors have to decide in this case, Doctor?

veterans' memorial cemetery advisory board and for the fish and wildlife board, the chairman or executive secretary of the board shall be the adopting authority. The secretary of state shall be the adopting authority for the office of professional regulation.

(12) "small business" means a business employing no more than twenty full-time employees.

Vermont Statutes Annotated, Title 3, Section 814.

§ 814. Licenses

(a) When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases shall apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire, until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements

for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

(d) An agency having jurisdiction to conduct proceedings and impose sanctions in connection with conduct occurring during the time a license is operative shall not lose jurisdiction if the license is not renewed or is surrendered or otherwise terminated prior to initiation of such proceedings.

Vermont Statutes Annotated, Title 3, Section 831.

§ 831. Required policy statements and rules

(a) Where due process or a statute directs or permits an agency to adopt rules, regulations or both, unless that statute expressly provides to the contrary, it shall be construed as requiring or permitting the agency to adopt rules in the manner provided in this chapter.

(b) An agency shall adopt a procedure describing an existing practice when so requested by an interested person.

(c) An agency shall initiate rulemaking to adopt as a rule an existing practice or procedure when so requested by 25 or more persons or by the legislative committee on administrative rules.

(d) An agency required to hold hearings on contested cases as required by section 809 of this title shall

Q. I understand, but is it or is it not an entirely different question than the question I am asking?

A. If you want is it acceptable to them, we didn't ask that. We asked if it was acceptable to them for other people to obtain and view it.

Q. Is it the whole purpose of the survey to find out whether this material is accepted or not accepted in this community?

A. That's correct.

Q. Isn't the easiest way to do is ask if it is accepted or not accepted to them, them being the community?

A. We are doing that, but we are doing that, number one, by asking this question and then by showing them the material and asking them once again to determine based on viewing the material.

Q. Let's look at the question, number nineteen. Is that the first one that you say is applicable to your ultimate conclusion concerning this particular film?

A. Yes, it is.

Q. How does that question read, Doctor?

A. "Is it or is it not acceptable to you for adults in your community to obtain and view such videos and [p. 1262] magazines if they should want to?"

Q. That is a question of toleration, isn't it, Doctor?

A. No, in my opinion it is a question of acceptability.

(c) Sections 831(b) and (c) of this title do not require the attorney general to adopt procedures or rules describing the content of opinions or other legal advice given to agencies.

(d) Notwithstanding sections 831(b) and (c), when an agency receives a request to adopt a procedure or rule, it may elect to issue a declaratory ruling when it has in effect a procedure or rule, as requested, which disposes of the question presented.

Vermont Statutes Annotated, Title 3, Section 835.

§ 835. Compilation of procedures

Procedures shall be maintained by the agency in an official current compilation that is indexed by subject. Each addition, change or deletion to the official compilation shall also be dated, indexed and recorded. The compilation shall be a public record.

Vermont Statutes Annotated, Title 3, Section 836.

§ 836. Procedure for adoption of rules

Except for emergency rules, rules shall be adopted by taking the following steps:

(1) prefiling, when required;

(2) filing proposed rule;

(3) publishing proposed rule;

(4) holding public hearing and receiving comments;

(5) filing final proposal;

(6) responding to legislative committee on administrative rules when required; and

(7) filing adopted rule.

Vermont Statutes Annotated, Title 3, Section 837.

§ 837. Prefiling

Except for emergency rules, a rule shall be prefiled with the inter-agency committee on administrative rules fifteen days before filing under section 838 of this title if the governor has required by current executive order that:

(1) all rules from that agency shall be prefiled; or

(2) all rules concerning the subject matter of the proposed rule shall be prefiled.

Vermont Statutes Annotated, Title 3, Section 838.

§ 838. Filing of proposed rules

(a) Proposed rules shall be filed with the secretary of state. The filing shall include the following:

(1) a cover sheet;

(2) an economic impact statement;

(3) an incorporation by reference statement, if the proposed rule includes an incorporation by reference;

(4) an adopting page;

(5) the text of the proposed rule; and

(6) an annotated text showing changes from existing rules.

(b) The cover sheet shall be on a form prepared by the secretary of state containing at least the following information:

(1) the name of the agency;

(2) the title or subject of the rule;

(3) a concise summary explaining the effect of the rule;

(4) the statutory authority for the rule;

(5) an explanation of why the rule is necessary;

(6) an explanation of the people, enterprises and government entities affected by the rule;

(7) a brief summary of the economic impact of the rule;

(8) the name, address and telephone number of an individual in the agency able to answer questions and receive comments on the proposal;

(9) a proposed schedule for completing the requirements of this chapter, including, if there is a hearing scheduled, the date, time and place of that hearing, and a deadline for receiving comments; and

(10) a signed and dated statement by the adopting authority approving the contents of the filing.

(c) The economic impact statement shall analyze the anticipated costs and benefits to be expected from adoption of the rule. Specifically, each economic impact statement shall, for each requirement in the rule:

(1) list categories of people, enterprises and government entities potentially affected and estimate for each the costs and benefits anticipated;

(2) compare the economic impact of the rule with the economic impact of other alternatives to the rule, including no rule on the subject or a rule having separate requirements for small business;

(3) include a flexibility statement. The flexibility statement shall compare the burden imposed on small businesses by compliance with the rule to the burden which would be imposed by alternatives considered under section 832a of this title.

In addition, each economic impact statement shall conclude that the rule is the most appropriate method of achieving the regulatory purpose and, with respect to small businesses, contain any findings required by section 832a of this title. Only employees of the agency and information either already available to the agency or available at reasonable cost shall be used in preparing economic impact statements.

(d) Any required incorporation by reference statement shall include a separately signed statement by the adopting authority:

(1) certifying that the text of the matter incorporated has been reviewed by the agency, with the name of the reviewing official;

(2) explaining how the text of the matter incorporated can be obtained by the public, and at what cost;

(3) explaining any modifications to the matter incorporated;

(4) discussing the comparative desirability of reproducing the incorporated matter in full in the text of the rule; and

(5) certifying that the agency has the capability and the intent to enforce the rule.

(e) The adopting page shall be on a form prepared by the secretary of state and shall contain the name of the agency, the subject of the proposed rule, an explanation of the effect of the proposal on existing rules and any internal reference number assigned by the agency.

(f) The annotated text of the rule shall include markings to clearly indicate changed wording from any existing rule.

Vermont Statutes Annotated, Title 3, Section 839.

§ 839. Publication of proposed rules

(a) Upon receiving a proposed rule, the secretary of state shall arrange for two formal publications of information relating to the proposal.

(b) The first formal publication of a proposed rule shall include the following information from the cover sheet:

(1) the name of the agency;

(2) the title or subject of the rule;

(3) a concise summary of the effect of the rule;

(4) an explanation of the people, enterprises and governmental entities affected by the rule;

(5) a brief summary of economic impact;

(6) the name, telephone number and address of an agency official able to answer questions and receive comments on the proposals;

(7) the date, time and place of the hearing or hearings; and

(8) the deadline for receiving comments.

(c) The second formal publication of a proposed rule shall include the following information from the sheet:

(1) the name of the agency;

(2) the title and subject of the rule; and

(3) the name, telephone number and address of an agency official able to answer questions and receive comments on the proposed rule.

(d) Formal publications shall be made on Thursdays in a consolidated advertisement in the newspapers of record. Annually on or before July 1, the secretary of state shall approve a number of newspapers having general circulation in different parts of the state as newspapers of record under this chapter.

(e) In addition to formal publication, the secretary of state shall also arrange for publication of an abbreviated notice of proposed rules on a weekly basis in selected newspapers in the state. These notices shall contain the subject of recently proposed rules, together with a brief statement by the secretary of state explaining where to write or telephone for more information on the rules.

(f) The secretary of state may edit all advertisements for clarity, brevity and format and shall include a

brief statement explaining how members of the public can participate in the rulemaking process.

(g) The secretary of state shall be reimbursed by agencies making publication so that all costs are prorated among agencies publishing at the same time.

Vermont Statutes Annotated, Title 3, Section 840.

§ 840. Public hearing and comment

(a) The agency may hold one or more public hearings for each proposed rule. A public hearing shall be scheduled if so requested by 25 persons, by a governmental subdivision or agency, or by an association having 25 or more members. The first hearing shall not be held sooner than 10 days following the second formal publication.

(b) On request, the agency shall promptly provide a copy of a proposed or final proposed rule. If the copy is mailed, it shall be sent not later than the end of the third working day after the request is received. The agency may charge for copying costs in the amount provided by law.

(c) An agency shall afford all persons reasonable opportunity to submit data, views or arguments, orally or in writing, in accordance with the terms of the notice given under section 839 of this title, but at least through the seventh day following the last public hearing.

(d) The agency shall consider fully all written and oral submissions concerning the proposed rule, and all submissions on separate requirements for small businesses.

(e) If requested by an interested person at any time before 30 days after final adoption of a rule, the adopting authority shall issue an explanation of the proposed rule. The explanation shall include:

(1) a concise statement of the principal reasons for and against the adoption of the rule in its final form; and

(2) an explanation of why the adopting authority overruled the arguments and considerations against the rule.

Vermont Statutes Annotated, Title 3, Section 841.

§ 841. Final proposal

(a) After considering public comment as required in section 840 of this title, an agency shall file a final proposal with the secretary of state and with the legislative committee on administrative rules.

(b) The filing of the final proposal shall include all information required to be filed with the original proposal, suitably amended to reflect any changes made in the rule and the fact that public hearing and comment has been completed. Where an agency decides in a final proposal to overrule substantial arguments and considerations raised for or against the original proposal or to reject suggestions with respect to separate requirements for small businesses, the final proposal shall include a description of the reasons for the agency's decision.

(c) The legislative committee on administrative rules shall distribute copies of final proposed rules to the

chairs of the appropriate standing committees. In addition, each member of the appropriate standing committees shall be notified that the final proposed rule has been filed, the date of filing and, upon request, shall be provided with a copy of the filing.

Vermont Statutes Annotated, Title 3, Section 842.

§ 842. Review by legislative committee

(a) Within 30 days of the filing of a final proposal, the legislative committee on administrative rules, by majority vote of the entire committee, may object under subsections (b), (c) or (d) of this section and recommend that the agency amend or withdraw the proposal. The agency shall be notified promptly of the objections. Failure to give timely notice shall be deemed approval. The agency shall within 14 days of receiving notice respond in writing to the committee. After receipt of this response the committee may withdraw or modify its objections.

(b) The committee may object under this subsection if a proposed rule is:

(1) beyond the authority of the agency;

(2) contrary to the intent of the legislature; or

(3) arbitrary.

When objection is made under this subsection, and the objection is not withdrawn after the agency responds, on majority vote of the entire committee, it may file the objection in certified form with the secretary of state. The objection shall contain a concise statement of the committee's reasons for its action. The secretary shall affix to each objection a certification of its filing and as soon as

practicable transmit a copy to the agency. After a committee objection is filed with the secretary under this subsection, or on the same grounds under section 817(d) of this title, to the extent that the objection covers a rule or portion of a rule, the burden of proof thereafter shall be on the agency in any action for judicial review or for enforcement of the rule to establish that the part objected to is within the authority delegated to the agency, is consistent with the intent of the legislature and is not arbitrary. If the agency fails to meet its burden of proof, the court shall declare the whole or portion of the rule objected to invalid. The failure of the committee to object to a rule is not an implied legislative authorization of its substantive or procedural lawfulness.

(c) The committee may object under this subsection if a proposed rule is not written in a satisfactory style according to section 833 of this title.

(d) The committee may object under this subsection if the economic impact statement fails to recognize a substantial economic impact of the proposed rule that the committee describes in its notice of objection.

The committee may object one time under this subsection and return the proposed rule to the agency as unacceptable for filing. The agency may then cure the defect and adopt the rule, or it may adopt the rule without change.

(e) When an objection is made under subsection (b) of this section and has been certified by the secretary of state, notice of the objection shall be included on all copies of the rule distributed to the public.

Vermont Statutes Annotated, Title 3, Section 843.

§ 843. Filing of adopted rules

(a) An adopting authority may adopt a properly filed final proposed rule after:

(1) The passage of 30 days from filing of a final proposal under section 841 of this title without receiving notice of objection from the legislative committee on administrative rules; or

(2) Receiving notice of approval from the legislative committee on administrative rules; or

(3) Responding to an objection of the legislative committee on administrative rules under section 842 of this title.

(b) The text of the adopted rule shall be the same as the text of the final proposed rule submitted under section 841, except that any germane change may be made by the agency in response to an objection or expressed concern of the legislative committee on administrative rules.

(c) Adoption shall be complete upon proper filing with the secretary of state and with the legislative committee on administrative rules. An agency shall have eight months from the date of initial filing with the secretary of state to adopt a rule unless extended by action or request of the legislative committee on administrative rules. The secretary of state shall refuse to accept a final filing after that date.

(d) Adopted rules filed shall include:

(1) A cover sheet on a form prepared by the secretary of state containing at least the following information:

(A) the name of the agency;

(B) the title or subject of the rule;

(C) a brief summary of any changes made since the filing of the final proposed rule, including any changes in expected economic impact;

(D) a summary of the dates on which the agency complied with the procedural requirements of this chapter; and

(E) a signed and dated statement by the adopting authority that the procedural requirements of this chapter have been met and that the adopting authority approves of the contents of the filing; and

(2) An adopting page as required by section 838 of this title; and

(3) The text of the rule.

(e) After adopting a rule, the agency shall create a file containing all papers used or created in that action. The file shall be retained for at least one year.

Vermont Statutes Annotated, Title 3, Section 844.

§ 844. Emergency rules

(a) Where an agency believes that there exists an imminent peril to public health, safety or welfare, it may

adopt an emergency rule. The rule may be adopted without having been prefiled or filed in proposed or final proposed form, and may be adopted after whatever notice and hearing that the agency finds to be practicable under the circumstances. The agency shall make reasonable efforts to ensure that emergency rules are known to persons who may be affected by them.

(b) Emergency rules adopted under this section shall not remain in effect for more than 120 days. An agency may propose a permanent rule on the same subject at the same time that it adopts an emergency rule.

(c) Emergency rules adopted under this section shall be filed with the secretary of state and with the legislative committee on administrative rules. The legislative committee on administrative rules shall distribute copies of emergency rules to the appropriate standing committees.

(d) Emergency rules adopted under this section shall include:

(1) as much of the information required for the filing of a proposed rule as is practicable under the circumstances; and

(2) a signed and dated statement by the adopting authority explaining the nature of the imminent peril to the public health, safety or welfare and approving of the contents of the rules.

Vermont Statutes Annotated, Title 3, Section 845.

§ 845. Effect of rules

(a) Rules shall be valid and binding on persons they affect, and shall have the force of law unless amended or

revised or unless a court of competent jurisdiction determines otherwise. Except as provided by section 842(b) of this title, rules shall be prima facie evidence of the proper interpretation of the matter that they refer to.

(b) No agency shall grant routine waivers of or variances from any provisions of its rules without either amending the rules, or providing by rule for a waiver or variance procedure. The duration of the waiver or variance may be temporary if the rule so provides.

(c) Nothing in this chapter:

(1) allows rules to provide for penalties, fines or imprisonment not authorized by other law;

(2) enlarges the authority of any agency to impose requirements on any member of the public; or

(3) allows an agency by rule to require permits or licenses unless specifically authorized by other law.

(d) Rules adopted under this chapter shall take effect 15 days after adoption is complete or at a later time provided in the text of the rule or on its adopting page. However, an emergency rule shall take effect upon filing, or at a later time provided in the text of the rule or on its adopting page.

(e) Rules shall remain in effect until:

(1) repealed or modified by subsequent rule;

(2) limited or invalidated by a court; or

(3) repealed or modified by statute.

Vermont Statutes Annotated, Title 3, Section 846.

§ 846. Remedies for procedural failures

(a) The following shall prevent a rule from taking effect:

(1) failure to file with the secretary of state; or

(2) failure to file with the legislative committee on administrative rules; or

(3) failure to make a required filing with the interagency committee on administrative rules; or

(4) failure to respond to an objection of the legislative committee on administrative rules.

(b) The following shall not affect the validity of a rule after its adoption:

(1) inadvertent failure to make required assurances relating to an incorporation by reference; or

(2) amendment after public hearing of the text of a proposed rule in a manner that does not cause the published summary of the rule to become misleading or inadequate; or

(3) failure to certify that all procedures required by this chapter have been satisfied; or

(4) failure to meet the style requirements of section 833 of this title; or

(5) inadvertent failure to mail notice or copies of any rule.

(c) For other violations of this chapter, the court may fashion appropriate relief.

(d) An action to contest the validity of a rule for noncompliance with any of the provisions of this chapter other than those listed in subsection (a) of this section must be commenced within one year after the effective date of the rule.

Vermont Statutes Annotated, Title 3, Section 847.

§ 847. Availability of adopted rules; rules by secretary of state

(a) The secretary of state shall keep open to public inspection a permanent register of rules.

(b) The secretary of state shall publish not less than quarterly a bulletin setting forth the text of all rules filed since the immediately preceding publication and any objections filed under section 842(b) of this title.

(c) The bulletin may omit any rule if either:

(1) A commercial publisher offers a comparable publication at a competitive price; or

(2) All three of the following apply:

(A) its publication would be unduly cumbersome or expensive; and

(B) the rule is made available on application to the adopting agency; and

(C) the bulletin contains a notice stating the general subject matter of the omitted rule and stating how a copy of the rule and any objection filed under section 842(b) may be obtained.

(d) Bulletins shall be made available upon request to agencies and officials of this state free of charge and to other persons at prices fixed by the secretary of state to cover mailing and publications costs.

(e) The secretary of state shall adopt rules for the effective administration of this chapter. These rules shall be applicable to every agency and shall include but not be limited to uniform procedural requirements, style, appropriate forms and a system for compiling and indexing rules.

Vermont Statutes Annotated, Title 3, Section 848.

§ 848. Rules repeal; operation of law

(a) A rule shall be repealed without formal proceedings under this chapter if:

(1) the agency which adopted the rule is abolished and its authority, specifically including its authority to implement its existing rules, has not been transferred to another agency, or

(2) a court of competent jurisdiction has declared the rule to be invalid, or

(3) the statutory authority for the rule, as stated by the agency under section 838(b)(4) of this title, is repealed by the general assembly or declared invalid by a court of competent jurisdiction.

(b) When a rule is repealed by operation of law under this section the secretary of state shall delete the rule from the published code of administrative rules.

(c) If the statutory authority for a rule, as stated by the agency under section 838(b)(4), is amended by the general assembly, the agency shall review the rule and make a determination whether such statutory amendment repeals the authority upon which the rule is based, and shall, within 60 days of the effective date of the statutory amendment, inform in writing the secretary of state and the legislative committee on administrative rules whether repeal or revision of the rule is required by the statutory amendment.

Vermont Statutes Annotated, Title 8, Section 3541.

§ 3541. Filing and approval of forms

(a) No basic insurance policy, certificate or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or printed rider of endorsement form or form of renewal certificate, shall be delivered, or issued for delivery in this state, unless the form has been filed with and approved by the commissioner. This provision shall not apply to surety bonds, or to specially rated inland marine risks, nor to policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. All certificates delivered or issued for delivery in this state shall be filed with the commissioner for approval if the group policy does not qualify under subdivision 3368(a)(4) of this title at the time of delivery or issuance. As to forms for use in property, marine (other than wet marine and transportation insurance), casualty and surety insurance coverages the filing required by this subsection may be made by rating organizations on behalf of its members and subscribers; but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.

(b) Every such filing shall be made not less than thirty days in advance of any such delivery. At the expiration of such thirty days the form so filed shall be

deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. Approval of any such form by the commissioner shall constitute a waiver of any unexpired portion of such waiting period. The commissioner may extend by not more than an additional thirty days the period within which he may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the initial thirty day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The commissioner may at any time, after notice and for cause shown, withdraw any such approval. In any notice of disapproval, or withdrawal of a previously approved form, the commissioner shall state that a hearing will be granted within twenty days upon request of the insurer.

(c) Any order of the commissioner disapproving any such form or withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonably to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at expiration of such period, not less than thirty days after the giving of notice of withdrawal, as the commissioner shall in such notice prescribe. Any demand for a hearing relative to the commissioner's withdrawal of approval of a form which has been received by the commissioner prior to the effective date of such withdrawal shall stay such action pending the hearing thereon.

(d) The commissioner may, by order, exempt from the requirements of this section for so long as he deems proper any insurance document or form or type thereof as specified in such order, to which, in his opinion, this section may not practicably be applied, or the filing and approval of which are, in his opinion, not desirable or necessary for the protection of the public.

(e) Appeals from orders of the commissioner disapproving any such form or withdrawing a previous approval may be taken as provided in sections 4660 and 4661 of this title.

(f) Each filing of a policy, contract, endorsement, rider, certificate, or application form shall be accompanied by payment to the commissioner of a nonrefundable fee of $20.00, per filing submission. A minimum fee of $100.00 shall accompany each such filing if submitted by a rating, advisory or service organization.

Vermont Statutes Annotated, Title 8, Section 3542.

§ 3542. Grounds for disapproval

The commissioner shall disapprove any form filed under this subchapter or withdraw any previous approval thereof, only on one or more of the following grounds:

(1) If it is in any respect in violation of or does not comply with this act.

(2) If it contains or incorporates by reference, where such incorporation is otherwise permissible, any inconsistent, ambiguous or misleading clauses, or exceptions

and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

(3) If it has any title, heading, or other indication of its provisions which is misleading.

(4) If it is printed or otherwise reproduced in such manner as to render any provision of the form substantially illegible.

Vermont Statutes Annotated, Title 8, Section 4201.

§ 4201. Filing and approval of policies; review

A policy of insurance covering against loss or damage resulting from accident to, or injury suffered by an employee or other person, and for which the insured is liable, shall not be issued or delivered to a person, firm or corporation resident of, or doing business in this state, until a copy of the form thereof has been filed with the commissioner; and it shall not be issued or delivered unless approved by him. If he adjudges that such form does not comply with the requirements of law, he shall forthwith give written notice to the insurer who filed such form, specifying the reasons for his action, and it shall be unlawful thereafter for such insurer to issue a policy in such form. The action of the commissioner in this regard shall be subject to review by writ of certiorari.

§ 4201a. Filing fees

Each filing of a policy or contract form or document, submitted pursuant to section 4201 of this title, shall be

accompanied by payment to the commissioner of a nonrefundable fee of $20.00 per filing submission.

Vermont Statutes Annotated, Title 8, Section 4202.

§ 4202. Form and contents of policy

Such policy shall not be so issued or delivered:

(1) Unless every printed portion thereof and any endorsement or attached papers shall be plainly printed;

(2) Unless a brief description thereof is plainly printed on the first page; and

(3) Unless the exceptions of the policy are printed with the same prominence as the benefits to which they apply.

Vermont Statutes Annotated, Title 8, Section 4203.

§ 4203. Required conditions

Each policy so issued and delivered shall contain in substance the following conditions:

(1) The company shall pay and satisfy any judgment that may be recovered against the insured upon any claim covered by this policy to the extent and within the limits of liability assumed thereby, and shall protect the insured against the levy of any execution issued upon any such judicial judgment or claim against the insured. No limitation of liability in this policy shall be valid if, after a judgment has been rendered against the insured in

respect to this legal liability for damages in a particular instance, the company continues the litigation by an appeal or otherwise, unless the insured shall stipulate with the company, agreeing to continue such litigation;

(2) No action shall lie against the company to recover for any loss under this policy, unless brought within one year after the amount of such loss is made certain either by judgment against the insured after final determination of the litigation or by agreement between the parties with the written consent of the company;

(3) The insolvency or bankruptcy of the insured shall not release the company from the payment of damages for injury sustained or loss occasioned during the life of the policy, and in case of such insolvency or bankruptcy an action may be maintained by the injured person or claimant against the company under the terms of the policy, for the amount of any judgment obtained against the insured not exceeding the limits of the policy; and

(4) Payment of any judicial judgment or claim by the insured for any of the company's liability hereunder shall not bar the insured from any action or right of action against the company. In case of payment of loss or expense under this policy, the company shall be subrogated to all rights of the insured against any party, as respects such loss or expense, to the amount of such payment, and the insured shall execute all papers required and shall cooperate with the company to secure to the company such rights.

Vermont Statutes Annotated, Title 8, Section 4203.

§ 4203. Required conditions

Each policy so issued and delivered shall contain in substance the following conditions:

* * *

(5) Policies of motor vehicle insurance shall not provide for any adjustment of rates, the application of any merit rating surcharge plan, nor any similar adjustment or surcharge for any payments made to or on behalf of an insured for damages not attributable to any fault of the insured.

(6) Policies of motor vehicle insurance shall not provide for any adjustment of rates, the application of any merits surcharge rating plan, nor any similar adjustment or surcharge for the first violation of 23 V.S.A. § 800.

Vermont Statutes Annotated, Title 8, Section 4204.

§ 4204. Illegal provisions

Such policy shall not be so issued or delivered if it contains a provision contradictory, in whole or in part, to any of the provisions of sections 4201-4203 and 4205-4209 of this title; nor shall any endorsements or attached papers vary, alter, extend, be used as a substitute for, or in any way conflict with such provisions. Such policy shall not be so issued or delivered if it contains any provision purporting to make any portion of the charter, articles of association, constitution or bylaws of the

insurer a part of the policy unless such portion of the charter, articles, constitution or bylaws shall be set forth in full in the policy.

Vermont Statutes Annotated, Title 8, Section 4205.

§ 4205. Effect of false statement in application

The falsity of a statement in the application for a policy covered by such provisions shall not bar the right to recovery thereunder unless such false statement was made with actual intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by insurer.

Vermont Statutes Annotated, Title 8, Section 4206.

§ 4206. Acts not constituting waivers

The acknowledgment by an insurer of the receipt of notice given under a policy covered by such provisions, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of a claim thereunder shall not operate as a waiver of any of the rights of the insurer in defense of a claim arising under such policy.

Vermont Statutes Annotated, Title 8, Section 4207.

§ 4207. Penalty for unauthorized alterations

An alteration of a written application for insurance by erasure, insertion or otherwise, shall not be made by a person other than the applicant without his written consent, and a person making such alteration without the

consent of the applicant shall be fined not more than $500.00. If such alteration is made by an officer of the insurer, or by an employee of the insurer with the insurer's knowledge or consent, such act shall be deemed to have been performed by the insurer thereafter issuing the policy upon such altered application.

Vermont Statutes Annotated, Title 8, Section 4208.

§ 4208. Construction of illegal policies

A policy issued in violation of such provisions shall be held valid, but shall be construed as provided in such provisions. When a provision in such policy is in conflict with such provisions, the rights, duties and obligations of the insurer, the policy holder and the beneficiary shall be governed by such provisions.

Vermont Statutes Annotated, Title 8, Section 4209.

§ 4209. Penalties

A company, corporation, association, society or other insurer or any officer or agent thereof that issues or delivers to a person, firm or corporation in this state a policy in wilful violation of such provisions shall be fined not more than $500.00 for each offense. The commissioner may revoke the license of a company, corporation, association, society or other insurer of another state or country, or of the agent thereof, that wilfully violates such provisions.

Vermont Statutes Annotated, Title 8, Section 4210.

§ 4210. Cost of examinations

The insurer under any motor vehicle liability insurance policy shall bear the cost of all physical examinations imposed on the insured or proposed insured as a condition for issuance or renewal of the policy.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

GERRISH CORPORATION et. al. Woodstock East Woodstock, Vermont	)	
Plaintiff,	)	Docket No. 89-19
v.	)	(Filed January 17, 1989)
Universal Underwriters Insurance Company Kansas City, Missouri	)	
Defendant	)	

Complaint for Declaratory Judgment

Parties, Jurisdiction and Venue

1. This action is filed under the Federal Declaratory Judgment Act, 28 U.S.C. §2201. This court has jurisdiction over this action pursuant to 28 U.S.C. §1334(b).

2. Kurt D. Gerrish is a citizen of New Hampshire. Gerrish Corporation d/b/a Gerrish Motors and d/b/a Scrub-A-Dub is a Vermont Corporation with a principal place of business in Woodstock, Vermont.

3. Defendant Universal Underwriters Insurance Company has a principal place of business in Kansas City, Missouri.

The Pollution Controversy

4. Plaintiff Gerrish Corporation is the owner of a shopping center in Woodstock, Vermont, known as "Woodstock East". Woodstock East consists of approximately 4.8 acres, which since 1968 has been

developed and operated as a multi-use property, including approximately 15 retail stores and 8 apartments. From 1968 through 1988, Gerrish Corporation's business offices and various businesses, including Gerrish Motors which operated an automotive dealership (sales, leasing, and service) on behalf of its various franchises and Scrub-A-Dub, a car wash and retail petroleum sales facility, were also located at Woodstock East. Among other things, Scrub-A-Dub, a corporate division of Gerrish Corporation, sold petroleum products to business customers of Gerrish Motors.

5. During 1972, certain oil storage tanks were installed at Woodstock East as a part of the retail petroleum sales business conducted by Scrub-A-Dub. The tanks were installed by Woodstock Structures, Inc., and retail sales began during November of 1972.

6. During the next twelve months, Scrub-A-Dub sold in excess of 75,000 gallons of petroleum to its customers, and received periodic fuel deliveries to replenish its supplies.

7. During November 1973, Scrub-A-Dub through its employees discovered that a certain quantity of gasoline could not be accounted for, and concluded that a substantial quantity of the lost product had to be the result of a gasoline spill. The volume of gasoline loss was computed to be 4,785 gallons for the period December 1972 through November 1973, which loss could also have involved unauthorized or unrecorded taking or theft of a certain amount of such gasoline.

8. In the repairs which followed, the storage tanks were excavated and tested and determined not to be leaking. However, a certain pipe fitting or connector involving one tank and gasoline pump was determined to be cracked. This fitting was then thought

to be the probable source for the lost gasoline, and a new pipe fitting and tank were installed.

9. In a subsequent settlement, Gerrish Corporation received $2,086 for the value of the lost gasoline product. In return, Gerrish Corporation released Woodstock Structures, Inc., and Wyman's Inc., from damages it sustained on account of the gasoline loss.

10. On May 31, 1984 Gerrish Corporation entered into a lease and option to purchase agreement with Woodstock East Associates, a limited partnership. By this agreement, Gerrish Corporation leased its Woodstock East premises to Woodstock East Associates for a term of five years. Such agreement also contained an option to purchase, which option has not been exercised by the lessee. At all times material since May 31, 1984, Gerrish Corporation has continued to hold title in fee simple to such property.

11. On May 6, 1985, the State of Vermont through its Agency of Environmental Conservation ("the State") notified Gerrish Corporation that Woodstock East was the source of petroleum pollution which was entering a "natural drainage stream" which "empties directly" into the Ottauqechee River. Such "continued migation [sic]" was determined to be hazardous and in violation of State law, and the State gave notice pursuant to 10 V.S.A. section 1283 that appropriate action would be required "to determine the source, movement and extent of product leakage" ("the Pollution Claim"). Further, the State gave notice that it had the right to undertake the steps needed to determine the source of the pollution and efforts required to minimize and correct the pollution, but first had the obligation to "provide parties who may be potentially responsible for the threat to the environment with an opportunity to voluntarily perform the necessary corrective actions

under the direction of the Agency." It further advised that the State had the authority to expend State funds to undertake the necessary clean-up efforts and had the statutory authority, "pursuant to 10 V.S.A. 1283, to recover these costs from the responsible party". See Attachment A, copy of State's letter of May 2, 1985 to Kurt Gerrish.

12. Upon receipt of the State's letter, Gerrish Corporation notified Universal and undertook efforts through its employees and consultants to comply with the State's requests for monitoring and clean-up of the pollution. By letter of June 11, 1985 (Attachment B), Gerrish Corporation notified Universal and requested that such insurer be responsible for further costs involved in monitoring and cleaning up the source of the pollution. Gerrish Corporation further requested a response concerning whether coverage would be afforded under the terms of Universal's insurance policy, No. 428584D ("the Policy", copy attached as exhibit C).

13. Universal responded by agreeing to investigate the State's Pollution Claim, but did so under a certain non-waiver agreement (copy attached as Exhibit D-1). Universal, moreover, demanded that Gerrish Corporation report all further "contacts by the State" and "[u]nder no circumstances should you commit Gerrish Corporation to any admission or concession of any liability either for further testing or for any clean-up activities" (see Attachment D-2, copy of letter from Edward R. Kiel, Esq., to Philip M. Johnson, Esq., dated December 12, 1985).

14. Thereafter, Universal agreed to certain monitoring and passive clean-up efforts undertaken by Ground Water Technology, Inc. However, Universal has consistently maintained that it has no responsibility (1) to undertake, either on its own initiative or through

direct contact with the State or others, active clean-up of the source of the Pollution Claim or (2) to determine whether the Pollution Claim and its cost of clean-up are an injury which is insured under the Policy. Furthermore, it has refused to reimburse Gerrish Corporation for all expenses it has incurred to date as a consequence of the State's Pollution Claim. Such expenses, among other things, include legal services provided by Phillip M. Johnson, Esq. (see Attachment D-3, copy of letter of Phillip M. Johnson, Esq., to Ed Grogan of Universal, dated December 5, 1985).

15. In subsequent correspondence, Universal has advised (1) that it will not "indemnify any future owners of the property" (see Attachment D-4, letter of Gary L. Mayberry to Kurt Gerrish, dated September 15, 1986); (2) that it has not identified with "particularity" the source and cause of the pollution and (3) "cannot, at this time, provide you with any guarantee regarding our future commitment to all claims relating to this loss" (see Attachment D-5, letter of Gary L. Mayberry to Gerrish Motors, dated July 20, 1987);

16. In subsequent correspondence, Universal through its attorney advised "I am authorized to state that if upon conclusion of the investigation into the causes and origins of the current pollution problem at Gerrish Corporation it is determined that Gerrish Corporation or any other named insured caused the pollution during the policy period and that:

    (1) it was sudden and accidental and does not involve pollution of any waterway (Unicover Coverage Part 500 Garage Insurance; Exclusions (m) and (n)) or

(2) occurred in connection with an auto used in garage operations (Vermont State Amendatory Part);

then Universal Underwriters will cover the loss subject to the limits of the policy" (Attachment D-6, letter of Edward R. Kiel, Esq., to Philip M. Johnson, Esq., dated October 30, 1987).

For reasons discussed below (see Paragraphs 21-31), Plaintiffs disagree with Universal's position and believe that the Policy should afford coverage.

17. Thereafter, Universal through its attorney advised in a matter related to the 1972-1973 gasoline discharge "[w]e understand these losses occurred in 1972 and 1973. At that time Universal Underwriters was not the carrier which insured Gerrish. The acts complained of therefore do not fall within the policy period as defined by the insurance contract" (see Attachment D-7, letter of Edward R. Kiel, Esq., to Thomas P. Wright, Esq., dated November 11, 1988).

18. Such communications by Universal to Gerrish Corporation (see paragraphs 13-17) constitute an anticipatory breach of the Policy by Universal since, read together, they indicate an intent by Universal (1) not to pay the costs required to actively clean-up, as opposed to monitor, the pollution which has produced the State's Pollution Claim and (2) to deny, if and when the issue is raised, that the Policy issued by Universal for the year 1984-1985 provides coverage to the Pollution Claim which, although asserted in 1985, probably arose out of the 1972-1973 gasoline spill (see paragraphs 5-8).

The Insurance Coverage Provided by the Policy:

19. At Plaintiffs' request, Universal agreed to provide Plaintiffs with certain insurance coverage, and

issued Plaintiffs a certain insurance policy ("the Policy"), which was in effect for the period from September 1, 1984 to September 1, 1985.

20. Among other things, the Policy provided liability insurance coverage for Plaintiffs' Woodstock East premises. Further, the Policy provided coverage to Plaintiffs for various types of perils, including "GARAGE OPERATIONS AND AUTO HAZARD (Part 500)", "GENERAL LIABILITY INSURANCE (Part 950") and Umbrella coverage (Part 980), (collectively referred to hereafter as the "Insured Perils").

21. Such coverage of the Insured Perils was subject to the requirements of Chapter 113, Vt. Stat., particularly section 4201, which required Universal to file and obtain prior approval of its specimen policies, including exclusions, by the Department of Banking and Insurance ("the Department"), and section 4202, which required Universal to comply with certain disclosure standards for the form and contents of its policies, which included the obligation to print the exclusions of the policy "with the same prominence as the benefits to which they apply".

22. Upon information and belief, at all times between January 1973 and July 1, 1984, the Department required all insurers writing insurance policies for Vermont residents including businesses to provide coverage for pollution losses or damages incurred by or asserted against Vermont insureds. During such period, certain insurers provided specific endorsements to their Vermont policies, either similar or identical to endorsements prepared by the Insurance Services Office (see Attachment E), which specifically stated that "contamination or pollution" coverage would not be excluded from coverage sold by such insurers to Vermont residents.

23. Not withstanding the language of Vt. Stat. Tit. 8 section 4201 and the Department's specific requirement, in effect for the years 1973 through 1984, that pollution coverage would be specifically provided all Vermont residents, Universal undertook to eliminate such coverage from portions of the Policy issued to Plaintiffs.

24. In its Garage Operations or Auto Hazard coverage (see Part 500, at 22-26 of Attachment C), Universal undertook "to pay all sums the INSURED must pay as damages (including punitive damages where insurable by law) because of INJURY to which this insurance applies caused by an OCCURRENCE arising out of GARAGE OPERATIONS OR AUTO HAZARD". Such coverage was limited by numerous exclusions, including (m) and (n);

    "(m) INJURY caused by the dumping, discharge or escape of irritants, pollutants or contaminants. This exclusion does not apply if the discharge is sudden and accidental";

    "(n) INJURY caused by the discharge, release, or escape of any petroleum substance into or upon any body of water or water course, regardless of the nature of the discharge, release, or escape (whether accidental or not)";

25. Such exclusions notwithstanding, the State's Pollution Claim constitutes an injury to Plaintiffs covered under Universal's Garage Operations coverage (see the Policy, at 22), which insures claims arising out of "the ownership, maintenance or use of that portion of any premises where YOU conduct YOUR AUTO business and all other operations necessary or incidental thereto." This coverage includes the retail petroleum sales operation which was, among other

things, utilized by Plaintiffs to sell or supply gasoline or diesel fuel to the business customers of Gerrish Motors. See paragraph 4.

26. When the Policy was issued, and at all times material, it was the intent of the Department not to approve any pollution exclusions such as appear above in Paragraph 25. Such exclusions, therefore, are unlawful and of no force and effect pursuant to Vt. Stat. Tit. 8, sections 4201 and 4204.

27. In its Policy, Universal set forth certain language which addressed its pollution and contamination exclusions which would be applicable to Vermont insureds. In its exclusions (m) and (n), Universal deleted such exclusions "with respect to any AUTO insured by this policy and licensed or principally garaged in, or used for GARAGE OPERATIONS in Vermont" (see Attachment C, "Vermont State Amendatory Part". Such language concerning these exclusions is void and unenforceable in Vermont because (1) it purports to eliminate pollution coverage for certain garage operations, and thus is contrary to the express policy of the Department; (2) has not received express approval by the Department in accordance with Vt. Stat. Tit. 8, section 4201 and (3) even if the purported exclusions of pollution coverage are otherwise enforceable, then they are nevertheless void as contrary to the disclosure requirements of section 4202. See Attachment C, Declaration Page 1-C.

28. In its General Liability Insurance (Part 950), Universal undertook to insure various specified hazards including "PREMISES", "MANUFACTURERS AND CONTRACTORS", "Code 55411" and "RETAIL GAS SALES". In the insuring agreement for Part 950 coverage, Universal undertook to "pay all sums the INSURED legally must pay as damages (including

punitive damages where insurable by law) because of INJURY to which this Coverage Part applies, caused by an OCCURRENCE arising out of" the insured hazards. See Attachment C, at 31, and Declaration Page, at 1-D.

29. The State's Pollution Claim constitutes an injury to Plaintiff covered under Universal's General Liability Coverage (see the Policy, at 31-33), as either (1) an injury to "PREMISES" (arising out of the "ownership, maintenance or use of the premises . . . and all operations necessary on incidental thereto", Attachment C, at 31) or (2) an injury caused by "CONTRACTORS" (arising out of "Construction operations for YOU by any contractor at the premises . . . including YOUR acts or omissions in the general supervision of these operations" (*id.*, at 31). See also the Declarations Page (Attachment C, at 1-D) which covers "RETAIL GAS SALES", a term undefined in the Policy, which by its ordinary meaning encompasses the gasoline spill which occurred and resulting pollution which was discovered as stated earlier in Paragraph 7.

30. Universal provided two exceptions to Coverage under Part 950:

> "(e) INJURY caused by the dumping, discharge, or escape of irritants, pollutants, or contaminants. This exclusion does not apply if the discharge is sudden and accidental";
>
> "(f) INJURY caused by the discharge, release, or escape of any petroleum substance into or upon any body of water or water course, regardless of the nature of the discharge, release or escape (whether accidental or not)";

These two exclusions are unenforceable in Vermont because (1) they purport to eliminate pollution coverage under the general liability coverage, and thus are contrary to the express policy of the Department; (2) have not received express approval by the Department in accordance with Vt. Stat. Tit. 8 Section 4201; (3) are void as contrary to the disclosure requirements of section 4202, since the coverage provided ("RETAIL GAS SALES", see Declaration Page, *id.*, at 1-D) makes no reference to the purported pollution exclusions in violation of Vt. Stat. Tit. 8 sections 4202(2) and 4204 and (4) are automatically changed by the policy to conform to the law of Vermont, which includes the requirement of mandatory pollution coverage then required by the Department. See Attachment C at 7, "CONFORMING TO LAW" section.

31. In its Umbrella coverage (Parts 970 and 980, at 34-41 of Attachment C), Universal undertook to provide excess liability coverage to Plaintiffs for insured losses which are in excess of the coverage provided by the Policy (See Attachment C, Declaration Page, at 1-E). The limits of liability coverage for GARAGE OPERATIONS AND AUTO HAZARD (Part 500) and GENERAL LIABILITY INSURANCE (Part 950) are $300,000 per injury. The umbrella coverage provided by Part 980 is $3,000,000, after payment of a $10,000 retention by Plaintiffs.

Requests for Relief

Plaintiffs respectfully request that the court order and adjudge as follows:

1. that the State's Pollution Claim, discovered and asserted by the State during 1985, is an INJURY which had its OCCURRENCE during the coverage

period provided by the Policy; See the Policy, at 22 and 27;

2. that Universal has the obligation to defend and indemnify Plaintiffs with respect to the State's Pollution Claim;

3. that Universal's obligation to provide coverage with respect to the State's Pollution claim arises out of (1) GARAGE OPERATIONS (Part 500) and/or (2) GENERAL LIABILITY (Part 980) coverage, and that umbrella coverage (Part 980) is also provided in accordance with the limits of coverage as set forth in the Policy's Declaration Pages;

4. that Universal's written denials of coverage (see Paragraphs 14-18) constitute an anticipatory breach of contract, which abrogates Plaintiffs' duty to cooperate with Universal, at least with respect to its efforts to seek a declaration of its rights and obligations arising out of the Policy and with respect to the Pollution Claim;

5. that to the extent Universal has not paid and thus indemnified Plaintiffs for expenses actually incurred by them, that Universal has breached its contractual duties owed Plaintiffs pursuant to the Policy (see Attachment C, at 22 and 31; and

6. that Universal is responsible for Plaintiffs' attorneys' fees and related expenses related to and produced by this Declaratory Judgment Action.

Dated this 13th day, of January 1989, in Burlington, VT.

MANCHESTER LAW
OFFICES, P.C.

By: /s/ Robert E. Manchester
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(2)

91-1581

No. _____

Supreme Court, U.S.
FILED
MAR 30 1992
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1991

UNIVERSAL UNDERWRITERS INSURANCE COMPANY,

Petitioner,

vs.

GERRISH CORPORATION, doing business as Gerrish Motors, doing business as Scrub-a-Dub,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI, VOLUME II, PAGES 110-407

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DEFENDANT'S EXHIBIT A

(Logo)

UNIVERSAL UNDERWRITERS INSURANCE COMPANY
A MEMBER COMPANY OF THE LYNN INSURANCE
GROUP FIFTY-ONE FIFTEEN OAK •
KANSAS CITY, MISSOURI 64112

May 2, 1980

Honorable Tom Prindville, Commissioner
Vermont Insurance Department
State Office Building
Montpelier, Vermont 05602

(Received May 5, 1980)

APPROVED 5/19/80

DECLINED _____

BY: RII

Re: UNICOVER III Policy and Manual of Rules and Rates Proposed effective date: June 1, 1980

Dear Sir:

We wish to file with you our new modern language policy – UNICOVER III. This policy is designed exclusively for the Automobile Dealer, Truck Dealer and Motorcycle Dealer. It is our response to the requests of the N.A.I.C. to modernize. This simplified language policy exceeds every Flesch Readability standard established by any state for any line of Insurance – either commercial or personal. Type size and printers leading is also equal to, or in excess of, all minimums. Please refer to attached sworn Affidavit by a Company Officer as to Flesch scoring.

The final tally on our existing UNICOVER policy is that it was approved by every state where we attempted to file it. Your Department approved the existing UNICOVER on 12-7-72, and has approved the subsequent revisions necessary to keep it up-to-date. We hope you will give the same favorable consideration to UNICOVER III. Those states that require exceptions or amendments to our existing policy or Manual will find that each of those exceptions are also considered in this filing.

As you know, we have specialized in insuring the Motor Vehicle Dealer risks for over 58 years. Because of our expertise and specialization in this line of business for over half a century, Motor Vehicle Dealers expect us to take the lead in keeping their insurance package in line with current needs and developments.

The age of Consumerism is bringing with it a whole new set of problems. Many are especially unique for the Motor Vehicle Dealers. We have been keeping abreast of these problems by having our Claims Staff collect data on the type of claims being presented that were not covered by insurance. Sales personnel kept us informed from the other end. We then had our UNICOVER Committee concentrate for 1½ years creating an easy to read policy with only Motor Vehicle Dealers in mind. Their efforts were then critiqued in several study seminars and panel commissions that included the Underwriting, Sales and Claims Divisions – from the topmost officers down through the ranks. UNICOVER III is our reply to the demand from the Dealers to provide the needed new options.

As in the prior UNICOVER policy, this submission provides a package form, which may include both Property and Casualty insurance, excluding Workers' Compensation. The format is the same as the General Liability Automobile Policy, in that the Standard Policy Provisions, added to one or more of the Coverage Parts, each constitutes a complete separate contract of insurance.

As future time permits, we hope to be able to modify this contract from time-to-time in order that we will be able to insure other classes of risk. Since this filing is not a revision of the current UNICOVER, we wish for that policy to remain in effect so that we will have a policy to use for insuring those risks other than Motor Vehicle Dealers. Under separate cover we are sending a revised Manual Rule to preclude us from insuring Motor Vehicle Dealers under the old policy.

Enclosed, in duplicate, for your approval are the following forms which are necessary to convey coverage under UNICOVER III. Declaration pages are completed as a specimen policy for your convenience. If "blank" Declaration pages are needed, we will provide. UNICOVER III Manual of Rules and Rates is also attached.

The policy with the plastic three ring binder is for your files. The one without the binder cover is the one we would like for you to stamp "approved" and return to us for our permanent records. A Stamped, Self-addressed envelope is attached. The self-addressed envelope contains adequate postage as of the time of this filing.

COVERAGE PARTS – ALL 4/1/80 EDITION:	PAGE NUMBER – ALL 4/1/80 EDITION:
Declarations	Pages 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H
State Amendatory Part	Page 2
Table of Contents	Page 3-A, 3-B, 3-C, 3-D
Preamble	Page 4
General Conditions	Pages 5, 6, 7
Coverage Part No. 300 – Auto Physical Damage	Pages 8, 9, 10
Coverage Part No. 330 – Property	Pages 11, 12, 13, 14, 15, 16
Coverage Part No. 380 – Crime	Pages 17, 18, 19, 20, 21, 22, 23
Coverage Part No. 500 – Garage Insurance	Pages 24, 25, 26, 27, 28
Coverage Part No. 900 – Basic Auto Insurance	Pages 29, 30, 31, 32, 33
Coverage Part No. 950 – General Liability Insurance	Pages 34, 35, 36, 37
Coverage Part No. 970 – Personal Umbrella	Pages 38, 39, 40
Coverage Part No. 980 – Umbrella	Pages 41, 42, 43, 44, 45, 46

ENDORSEMENTS – ALL 4/1/80 EDITION:	PAGE NUMBERS – ALL 4/1/80 EDITION:
Applicable Endorsements	Pages 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67
Trick and Device Redefined – Coverage Part No. 300	Page 10-A
Conversion and Secretion Excluded From Trick and Device – Coverage Part No. 300	Page 10-B
Exclusion of Contingent Liability From Operation of Building Laws – Coverage Part No. 330	Page 16-A
$100 Limitation Removed – Coverage Part No. 380	Page 23-A
Limited Contractual Liability – Coverage Part No. 500	Page 28-A
Limited Watercraft Coverage – Coverage Part No. 500	Page 28-B
Limited Real Property Exclusion – Coverage Part No. 500	Page 28-C
Co-Workers Liability Excluded – Coverage Part No. 500	Page 28-D
Customer Rental Coverage Excluded – Coverage Part No. 500	Page 28-E

In order to create a product with distinctive readability and understanding, it was necessary to completely revise common insurance language. Due to this mass conversion from conventional to modern language, (and from generalization to specialization), UNICOVER III is an entirely new product. There is no diminishing, lessening, or restriction of standard insurance coverage unless outlined on the last page of this filing letter. All changes then would be for the betterment of, or to the advantage of, the Insured. Where new or broadened coverages are charged for, we have provided for the option or "buyback" with the expectation that there may be some Insurance Departments that would require this.

In general, this policy, like the other UNICOVER policy, is rated from the monoline manuals currently on file for the company. Options or Coverages rated under UNICOVER III for Motor Vehicle Dealer risks are found in Rule 6 of the UNICOVER III Manual of Rules and Rates. These pages are yellow colored to distinguish them from any other Manual filed by, or on behalf of, the Company.

DECLARATIONS AND GENERAL CONDITIONS

(Pages one thru seven)

A significant change in the DECLARATIONS is our method of presenting the coverages that were NOT purchased. We will display all available coverages. When a coverage is not purchased the words, "no cover" will appear beside that coverage. We believe this is an important step toward clarifying coverage, including those which were NOT purchased.

Where possible, DEFINITIONS and CONDITIONS were returned to their individual Coverage Parts for continuity and ease of readability and understanding. We only have four definitions here – outlining who "we" are and "they" are.

AUTO PHYSICAL DAMAGE COVERAGE PART

(Pages eight thru ten)

Customer's Autos are going to be insured the same as "Owned Autos." Of course, the Insured has the option of purchasing standard GKLL instead, if he so desires. This identical treatment allows for ease of completing monthly reports, etc. In particular, it will allow for such things as Trick and Device coverage where the "shop wise" thief comes in to claim a customer's car as his own.

Other property of customer's within an automobile is an option as before. However, the ISO had been separating rates as to Fire, Theft, Explosion, VMM, etc. This is no longer done. They have combined the rates into "Comprehensive." For that reason, our rates are 100% of the "Comp" rather than 100% of (the others combined) because their rates no longer exist.

A coverage we created over three decades ago is Trick and Device! It took the Industry several years to catch up with their "False Pretense" coverage. When they did, we created the "Fraudulent, Forged or Counterfeit Title Coverage" covering vehicles purchased from someone who legally had no right to sell them. We are now introducing the Criminal Conversion and Criminal Secretion (after parting with possession), extension to this coverage. The rate for this extension is .05 per $100 of values. This is a

very good example of our providing an option or "buy-back." Now, all three of these coverages are called "Trick and Device." There are three segments to the rate. Any, all, or none of these segments can be purchased.

PROPERTY COVERAGE PART

(Pages 11 thru 16)

Here is an example of "readability" that the Flesch test doesn't measure! Our UNICOVER Committee was able to replace five Coverage Parts with just one. Our "Property" Coverage Part now includes Glass, Inland Marine, Fire Legal Liability, Property and Time Element. Declaration pages will clarify existence of coverage, deductibles, and amounts of insurance.

BUSINESS CONTINUATION EXPENSE INSURANCE is an excellent example of specialized knowledge being put to use. What is commonly called "Earnings Insurance" might very well be suited for many Mercantile businesses; however, it has had one very serious deficiency for Automobile Dealers. They were required to pay premium on the value of their automobiles, and they could not practically hope to collect in proportion to the payment of premium should a loss occur. Any knowledgeable specialized Company Adjuster can put a Dealer back into the business of selling automobiles almost right away with a vacant lot, desk, etc. For this reason, our new Business Continuation Insurance will not require the insuring of this portion of a Dealers operation.

CONTINGENT LIABILITY FROM OPERATION OF BUILDING LAWS. This coverage is seldom purchased, but is frequently needed and the need isn't discovered

until it's too late. This coverage will not automatically include the "Greater Cost of Construction" or "Demolition Cost" coverages. Our method of presenting the "no cover" items on our Declarations pages should cause a serious consideration as to whether or not the coverage is needed.

GARAGE INSURANCE COVERAGE PART

(Pages 24 thru 28)

Here is how, or where we broadened coverages previously offered. Though we pioneered these coverages, most of the Industry uses them in their old form.

1. CO-WORKERS LIABILITY had been limited to Auto Accidents only. We've removed this limitation. When you consider the "DISCRIMINATION, HUMILIATION," etc., coverage explained later, you'll realize that CO-WORKERS LIABILITY is extended into this area also.

2. CUSTOMER RENTAL, (a coverage we had pioneered). We aren't limiting or stipulating the number of automobiles.

3. Federal Truth-in-Lending and Federal Odometer E&O coverages which we pioneered are now called "Legal Damages" or defense coverage. Among other things, we pick up Truth-in-Leasing Laws, Auto Damage Disclosure Laws, and coverage goes beyond the Federal level by defending for lawsuits arising out of State laws treating on these same subjects. Since local ordinances are beginning to appear too, the policy was broadened to defend these claims too.

4. BLANKET CONTRACTUAL and FRANCHISED PRODUCTS coverages have been offered in the past. Recently appearing on the scene are Indemnification

Agreements that the Dealers are being required by the Manufacturers to sign wherein they are indemnifying the Manufacturers for alleged negligence in service or repairs, etc.

The following would fall into the category of "new" coverages. Again, rates are in Rule Six of the UNICOVER III Manual of Rules and Rates. Coverages are outlined below. Since each of the coverages is completely untested, rates are then judgmental.

1. VEHICLE DAMAGE TO BUILDINGS RENTED, (when auto is operated by an insured). The need for this coverage around a Motor Vehicle Dealership is rather evident because of the considerable movement of vehicles.

2. WATERCRAFT AWAY FROM THE PREMISES – can now be covered for both hull damage and liability coverage. Previously coverage was limited to the premises only.

3. DISCRIMINATION, HUMILIATION, MENTAL ANGUISH, etc – the courts are setting serious precedents on these problems. Until now, large Commercial Umbrella Policies have only flirted with bits and pieces of this with sizeable [sic] retentions. We are recognizing and insuring these problems. Dealers are not only vulnerable in employment and hiring practices, but are open to exposure with each customer in any credit transaction, insurance application, etc. The need for insurance to cover these exposures is somewhat overdue.

4. EMPLOYEE BENEFITS liability coverage is new to our UNICOVER III. Errors, Omissions or negligent acts in the administration of Plans dealing with Profit Sharing, Pensions, Group Life, etc., are now covered.

5. PRODUCTS RELATED DAMAGES coverage will provide defense coverage for any suit brought by customers who purchase automobiles o have theirs serviced. Legal liability does not have to be apparent – injury does not have to occur, and the case does not have to be the result of an occurrence before we will defend. The typical lawsuit would be one in which a customer merely claims that his vehicle is no good. Of course, Bodily Injury suits because of PRODUCTS LIABILITY claims are still insured under the Garage Coverage Part.

6. PERSONAL INJURY LIABILITY INSURANCE coverage options are what make up Injury Group 3 and Injury Group 4. It was necessary to display the individual components and the rate for each component part for "buy-back" purposes. These coverages are on a "refer to Company" basis in the Commercial Lines Manual. Some states require the filing of "refer to Company" rates and other [sic] do not. These are being filed for your approval.

The Crime, General Liability, Basic Auto and Personal Umbrella sections are nearly identical to their counterparts in Unicover II with respect to coverage. The only substantial change is in the language itself, which has been updated to conform with the rest of the policy.

As mentioned earlier in the letter, there are a few areas of language change that, in a very technical sense, might seem to limit standard basic coverage. We believe that they clarify rather than limit, and trust that you will agree. They are:

1. CB radios and scanners have been in the same category. We've merely placed "radar detectors" in with treatment of CB radios.

2. "Pre-arranged racing contests" exclusions should also include a "rally." It is a timed event – a competitive event. We've added the word "rally" to the "pre-arranged racing contest" exclusion.

3. Currently, the word "occurrence" is defined as being neither "expected nor intended." Since we're covering administration of Profit Sharing Plans, Discrimination, and several other new hazards, we believe insurance should be clarified that dishonest, fraudulent and criminal acts are not covered. Exclusion "A" of the Garage Coverage Part specifies this.

4. Radio or TV antennas are now excluded for loss caused by ice, snow or sleet. We now cover these perils, but exclude all coverage where they are over 25 feet from the surface where anchored.

5. Both the standard language and our policy exclude BI and PD from the discharge or escape of petroleum into a body of water. Standard language states that the exclusion did not apply if the excape [sic] was sudden and accidental. We wish the exclusion to apply whether accidental or not, (Exclusion "n" of the Garage coverage Part).

6. Standard General Liability covers certain liabilities assumed under "incidental contracts," among which would be "undertakings to indemnify municipalities required by local ordinance." These undertakings would not be covered under our Garage Coverage Part.

We trust that this filing will meet with your approval. If you have any questions, please call me collect at 816-753-5800.

Sincerely,

/s/ Leo J. Cisper
Leo J. Cisper
Assistant Secretary

LJC/m

UNIVERSAL UNDERWRITERS INSURANCE COMPANY
A MEMBER COMPANY OF THE LYNN INSURANCE GROUP FIFTY-ONE FIFTEEN OAK •
KANSAS CITY, MISSOURI 64112

(logo)

VERMONT

STATE AMENDATORY PART

The GENERAL CONDITIONS are changed as follows:

The third paragraph of the CANCELLATION Condition is replaced by:

> If WE cancel, a written notice of cancellation will be mailed or delivered to YOU at the address shown in the declarations. The notice will state when, not less than 30 days thereafter, the cancellation will be effective. When cancellation is for nonpayment of premium or substantial increase in hazard, WE may cancel this policy by giving YOU 10 days notice of cancellation.

If this policy has been in effect for 60 days or more, or if this policy is a renewal of a policy WE issued, WE may cancel this policy only for one or more of the following reasons:

(1) nonpayment of premium, or

(2) fraud or material misrepresentation affecting this policy or in the presentation of claims thereunder or violation of any provisions of this policy, or

(3) substantial increase in hazard.

Notice of Cancellation to YOU will be by certified mail except that in the case of cancellation for nonpayment of premium, notice shall be by certified mail or certificate of mailing. The mailing of notice shall be sufficient proof of notice.

The following Conditions are added:

NONRENEWAL – If WE elect not to renew this policy, WE will mail or deliver to YOU at YOUR address shown in the declarations, written notice of OUR intention not to renew at least 30 days prior to the expiration date of this policy. This Condition will not apply:

(1) if WE have manifested OUR willingness to renew, or

(2) in case of nonpayment of premium, or

(3) if YOU fail to pay any advance premium required by US for renewal, or

(4) if any insured property designated in this policy is insured under any other insurance policy.

RENEWAL – If WE elect to renew this policy and have the necessary information to issue a

renewal policy, WE will confirm in writing at least 30 days prior to expiration OUR intention to renew this policy and the premium at which this policy is to be renewed.

If WE do not comply with the provisions of the foregoing paragraph, YOU will be granted renewal coverage at the rate or premium in effect under the expiring or expired policy or at rates in effect on the expiration date, which have been approved by the Commissioner. This will be done on a pro rata basis and will continue for 30 days after WE confirm renewal coverage and premium. This provision will not apply if YOU accept the renewal policy.

The following applies to all Coverage Parts affording AUTO LIABILITY or GENERAL LIABILITY insurance:

VERMONT STATUTORY LIABILITY ENDORSEMENT

This policy is issued and delivered subject to the Laws of Vermont and particularly to Chapter 113, Title 8 of the Vermont Statutes, including the following statutory requirements forming a part of such Chapter:

WE will pay and satisfy any judgment that may be recovered against the INSURED upon any claim covered by this policy to the extent and within the limits of liability assumed thereby, and shall protect the INSURED against the levy of any execution issued upon any such judicial judgment or claim against the INSURED. No limitation of liability in this policy shall be valid if, after a judgment has been rendered against the INSURED in respect to his legal liability for damages in a particular instance, WE continue

the litigation by an appeal or otherwise, unless the INSURED shall stipulate with US, agreeing to continue such litigation;

No action shall lie against US to recover for any LOSS under this policy, unless brought within one year after the amount of such LOSS is made certain either by judgment against the INSURED after final determination of the litigation or by agreement between the parties with OUR written consent;

The insolvency or bankruptcy of the INSURED shall not release US from the payment of damages for INJURY sustained or LOSS occasioned during the life of the policy, and in case of such insolvency or bankruptcy an action may be maintained by the injured person or claimant against US under the terms of the policy, for the amount of any judgment obtained against the INSURED not exceeding the limits of the policy; and

Payment of any judicial judgment or claim by the INSURED for any of OUR liability hereunder shall not bar the INSURED from any action or right of action against US. In case of payment of LOSS or expense under this policy, WE shall be subrogated to all rights of the INSURED against any party, as respects such LOSS or expense, to the amount of such payment, and the INSURED shall execute all papers required and shall cooperate with US to secure to the company such rights.

The following exclusions, pertaining to pollution and contamination, are deleted with respect to any AUTO insured by this policy and licensed or principally garaged in, or used for GARAGE OPERATIONS in Vermont:

Coverage Part 500 – GARAGE INSURANCE: (m) and (n)

Coverage Part 900 – BASIC AUTO INSURANCE: (g)

Coverage Part 980 – UMBRELLA: (g) and (h)

The following exclusions are changed to delete "or stunting activity:"

Coverage Part 500 – GARAGE INSURANCE: (h)(2)

Coverage Part 900 – BASIC AUTO INSURANCE: (h)(1)

Coverage Part 980 – UMBRELLA: (o)(2)(ii)

The following is added to Exclusion (c)(3) of Coverage Part 950 – GENERAL LIABILITY INSURANCE:

This exclusion does not apply to any snowmobile or trailer designed for use with it if the INJURY occurs on any premises owned by, rented to or controlled by YOU.

Omitted are 8 pages of prototype declaration sheets submitted with the policy form.

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UNICOVER
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UNICOVER®

The one and only!

UNIVERSAL UNDERWRITERS INSURANCE COMPANY
5115 OAK STREET KANSAS CITY, MISSOURI 64112

PREAMBLE

This entire document constitutes a multiple coverage insurance policy. Unless stated otherwise in a Coverage Part, each Coverage Part is made up of its provisions, plus those of the State Amendatory Part (if any), the General Conditions, and that portion of the declarations referring to the Coverage Part, including all endorsements made applicable to that Coverage Part. Each Coverage Part so constituted becomes a separate contract of insurance.

This policy is signed by OUR President and Secretary, and where required by law, by one of OUR authorized representatives.

/s/ John A. Magus
SECRETARY

/s/ E. M. Lynn
PRESIDENT

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KANSAS CITY MISSOURI 64112

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UNICOVER
GENERAL CONDITIONS

WE have issued this policy based on OUR understanding of YOUR agreements, statements, and representations, and in consideration of YOUR agreement to pay the required premiums when due. By accepting this policy YOU agree that YOU have been truthful with US, and that all agreements between YOU and US are included in the policy and declarations. WE, therefore, agree with YOU as stated in this policy, its endorsements, and the declarations.

DEFINITIONS – Except for headings or titles, a word written in all capital letters indicates it has a specific meaning as defined in each Coverage Part. The following definitions apply to any Coverage Part where they appear:

"INSURED" means any person or organization qualifying as an INSURED in the WHO IS AN INSURED provision of the Coverage Part. Except with respect to the limit of liability, the insurance afforded applies separately to each INSURED.

"WAR" means war (whether declared or not), civil war, rebellion, insurrection, revolution, or any act or condition incident to any of these.

"WE", "US", or "OUR" means Universal Underwriters Insurance Company.

"YOU" and "YOUR" means the person or organization shown in the declarations as the Named Insured.

PREMIUM – YOU must pay all required premiums when due, on the basis specified in the declarations:

> "Variable" – each month YOU must calculate the earned premiums by multiplying the rates (shown on the required reports of values) times the values YOU report as applicable to those rates. Together with the specific premiums shown on the report, YOU must pay US within 30 days after the close of the month for which the report is to be submitted. There will be no final adjustment in the earned premium if the values reported are accurate and premiums are paid promptly when due.
>
> "Non-variable" – each month YOU must report any required values and pay the provisional premium due each month. At the end of the policy period, after WE have received all the required reports, WE will calculate the earned premiums. If it is more than YOU paid, YOU will pay US the difference. If it is less, WE will refund the difference.
>
> "Fixed" – each month WE will bill YOU for a portion of the annual premium, for which there is no annual adjustment.
>
> "Annual" – the entire annual premium is due upon issuance of the policy.

INSPECTION AND AUDIT – WE have the right, but not the duty, to inspect the insured property or operations at any time. OUR doing so will not mean WE guarantee the

property or operation is healthful or safe, or that they conform to any rule, regulation, or law.

YOU must keep accurate records and send them to US promptly upon request. WE have the right to examine and audit YOUR books and records at any time, up to three years after this policy ends.

YOU must allow US to perform any inspection or audit.

FINANCIAL RESPONSIBILITY LAWS – A state motor vehicle law may require an INSURED to prove future financial responsibility. If WE certify this policy as providing such proof, that INSURED must repay US for any payments WE would not have had to pay without the certification.

ACTIONS AGAINST US – No INSURED can sue US for any reason, to recover under this policy, unless they have complied with all of its terms.

Suits for LOSS to YOUR property must be made within 12 months from the date YOU discover the LOSS, but no sooner than 90 days after YOU file a sworn proof of LOSS.

Suits for liability claims cannot be made until the amount of the INSURED'S liability has been finally determined, either by trial or a written agreement between the claimant, the INSURED and US. Once that liability has been so determined, WE will pay up to the limit as shown in the declarations. No one can join US in suing YOU, or an INSURED, or sue US direct.

OUR obligations to an INSURED remain, even if the INSURED becomes bankrupt or insolvent.

OTHER INSURANCE – Unless stated otherwise in a Coverage Part, this insurance is excess over any other insurance, whether it is collectible or not.

If more than one Coverage Part should insure a LOSS or INJURY the most WE will pay is the highest limit applicable. The limit under that Coverage Part will be inclusive of the lower limit in the other Coverage Part(s), not in addition to them.

SUBROGATION – YOU and each INSURED must do all in their power to preserve their rights to recover from others.

Once WE have made a payment under this policy, YOUR or an INSUREDS rights to recover from others become OUR rights.

CHANGES – The only way this policy can be changed is OUR issuing an endorsement(s) or substituting the declarations. They must be signed by one of OUR representatives when required by law. Nothing else will change this policy, waive any of its terms, or stop US from asserting any of OUR rights, not even notice to or knowledge learned by one of OUR representatives.

If WE change any of the terms of this policy, which broadens or extends the coverage, this policy will automatically be broadened or extended as if it were actually endorsed, if:

(a) the change was approved by YOUR state insurance regulatory authority, during the policy period or 45 days before the policy became effective; and

(b) the change is available to YOU without additional premiums.

ASSIGNMENT – No assignment of interest will affect this policy unless WE change the policy. If YOU die, however, YOUR legal representative can act on YOUR behalf. Any person having temporary custody of YOUR property will be covered until YOUR legal representative is appointed.

CANCELLATION – Either YOU or WE can cancel this policy, or a Coverage Part(s) by notifying the other.

If YOU cancel, return the policy to OUR representatives or write US, telling US the date YOU want the cancellation to be effective. The earned premiums will be calculated to include the customary short rate penalty.

If WE cancel, a written notice of cancellation will be mailed to YOU at the address shown in the declarations. The notice will state when, not less than 10 days thereafter, the cancellation will be effective. The mailing of the notice will be sufficient proof of notice. The effective date and hour of cancellation stated in the notice will become the end of the policy period. Delivery of such written notice, either by YOU or US, will be equivalent to mailing.

POLICY PERIOD – All insurance under this policy will begin and end at 12:01 AM (Standard Time) unless it replaces, or is replaced by, a policy beginning or ending at 12:00 Noon (Standard Time). In that event, WE will cover at that time.

This policy starts on the first date shown in Item 1 of the declarations, and ends on the second date shown there. Any coverage or property added or removed during that

time, will be covered for the period shown separately in the declarations.

POLICY TERRITORY – Unless stated otherwise in a Coverage Part, this policy covers:

(a) anywhere in the United States of America, its territories or possessions, or Canada;

(b) in international waters or air spaces if the LOSS or INJURY does not occur in the course of travel or transportation between countries, states, or nations;

(c) anywhere in the world, if the INJURY arises out of a PRODUCT YOU sold for use or consumption in (a) above and the original suit is also brought in (a) above.

ARBITRATION – If YOU and WE can't agree on the amount of YOUR property LOSS, either of us can demand an appraisal. Then, each will select a competent and disinterested appraiser who will, in turn, select a competent and disinterested umpire.

Each appraiser will state his appraisal of the LOSS. If they can't agree, they will submit their differences to the umpire. The amount of the LOSS will be determined by a written agreement of any two of them.

YOU and WE will each pay his own appraiser, and equally share the other expenses of the appraisal and the umpire. WE will not be held to have waived any of OUR rights by any act relating to appraisal.

CONFORMING TO LAW – If any part of this policy is in conflict with state law, those provisions in conflict will automatically change to conform to the law. If any statute

requires more time to notify US of a LOSS, or to start any legal action, the Coverage Part is changed to agree with the shortest time period permitted by statute.

PARTICIPATION – YOU will be entitled to participate in the distribution of policy dividends as authorized by OUR Board of Directors from time to time.

UNICOVER COVERAGE PART 300
AUTO PHYSICAL DAMAGE

INSURING AGREEMENT – WE will pay for LOSS of or to a COVERED AUTO from any cause, except as excluded or as stated otherwise in the declarations.

DEFINITIONS – When used in this Coverage Part:

"AUTO" means any type of land motor vehicle, (whether crated or not) trailer or semi-trailer, farm tractor or implement, each including its equipment and other equipment permanently attached to it.

"COLLISION" means (1) impact of a COVERED AUTO with another object or with a vehicle to which it is attached, or (2) upset of the COVERED AUTO. COLLISION does not mean impact of a COVERED AUTO with a bird or animal.

"COMPREHENSIVE" means the perils defined in SPECIFIED PERILS and UNNAMED PERILS.

"COVERED AUTO" means an AUTO (1) owned by or acquired by YOU or (2) not owned by YOU but in YOUR care, custody, or control.

"CUSTOMER'S AUTO" means a COVERED AUTO not owned or acquired by YOU but in YOUR care, custody or

control for safekeeping, storage, service or repair. It also means the property of others within the CUSTOMER'S AUTO when LOSS is caused by COLLISION.

"DEMONSTRATOR-COMPANY AUTO" means a COVERED AUTO shown on YOUR records as a demonstrator or company AUTO and (1) used in YOUR sales operation, or (2) furnished for the regular use of anyone.

"LOSS" means direct and accidental physical loss or damage, occurring during the Coverage Part period. LOSS, with respect to TRICK AND DEVICE, also means arising out of all transactions with any one individual, partnership, corporation, group of individuals or ring.

"NEW PRIVATE PASSENGER" and "NEW TRUCK" means a COVERED AUTO owned by or consigned to YOU and held for sale, not previously owned, titled or registered, and not used for any purpose other than road-testing.

"SERVICE AUTO" means a COVERED AUTO shown on YOUR records as a service vehicle, and used in YOUR service operations.

"SPECIFIED PERILS" means (1) fire, lightning, smoke or smudge due to fire, (2) stranding, sinking, burning, or derailment of any conveyance transporting the COVERED AUTO, (3) theft or larceny, (4) windstorm, hail, earthquake, explosion, riot or civil commotion, the forced landing of any aircraft or its parts, (5) flood or rising waters, external discharge or leakage of waters except LOSS resulting from snow, rain, or sleet (whether or not wind-driven), (6) malicious mischief or vandalism, or (7)

LOSS caused by a servicing hoist designed to raise an entire AUTO.

"TRICK AND DEVICE" means (1) theft or larceny caused by YOUR voluntarily parting with evidence of title to or possession of a COVERED AUTO, or (2) YOUR acquiring an AUTO from a seller who did not have legal ownership, in either event when YOU are induced to do so by any criminal scheme, criminal trick, criminal device, or criminal false pretense. TRICK AND DEVICE also means criminal conversion or criminal secretion of a COVERED AUTO after YOU have voluntarily parted with possession of it.

"UNNAMED PERILS" means all causes of LOSS not defined in COLLISION, SPECIFIED PERILS, or TRICK AND DEVICE.

"USED PRIVATE PASSENGER" and "USED TRUCKS" means all COVERED AUTOS owned or acquired by YOU and held for sale by YOU and not otherwise defined in this Coverage Part.

EXCLUSIONS – WE will not pay for LOSS:

(a) while the AUTO is being used as a public or livery conveyance, or in any illicit trade or transportation;

(b) due to WAR;

(c) due and confined to faulty work performed, defective parts or materials, wear, tear, freezing, mechanical or electrical breakdown or failure;

(d) when the evidence of ownership of an AUTO is fraudulent solely because of an undisclosed lien;

(e) due to confiscation by duly constituted governmental or civil authority;

(f) due to radioactive contamination or the explosion of a nuclear weapon or device or their consequences;

(g) caused by any dishonest, fraudulent, criminal, or intentional act committed by YOU or YOUR stockholders, partners, officers, employees, agents, or other party in interest;

(h) while the COVERED AUTO is operated in, or in practice or preparation for, any prearranged or organized race, rally, speed, demolition, or competitive contest, or in any stunting activity;

(i) by theft, larceny, conversion, or secretion when YOU voluntarily part with evidence of title to or possession of a COVERED AUTO, except by TRICK AND DEVICE;

(j) to a COVERED AUTO leased or rented to others. This exclusion does not apply:

(1) to YOUR salesman for use principally in YOUR AUTO business;

(2) to YOUR customers for a period of two months or less when:

(i) it temporarily replaces the CUSTOMER'S AUTO; or

(ii) the customer is awaiting delivery of an AUTO purchased from YOU;

(k) to an AUTO owned by, leased or rented to YOUR employee or members of their household. This exclusion does not apply:

(1) if their AUTO is being serviced or repaired by YOU under a written agreement, or

(2) to a COVERED AUTO leased or rented to YOUR salesman for use principally in YOUR AUTO business;

(l) due to loss of use caused by delay of service or repair, defective parts or faulty work performed;

(m) from any unexplained cause;

(n) to any device or instrument designed (1) for recording and/or reproducing sound, (2) as a scanning monitor or radar detector, (3) Citizen's Band radio, two way mobile radio or telephone, including its accessories or antennas. This exclusion does not apply to any such equipment permanently installed in the dash or console opening normally used by the AUTO manufacturer for installation of a radio, or to any antenna permanently attached to the AUTO.

YOU MUST REPORT – Within 30 days after the end of each calendar month, YOU must report the cost of all AUTOS owned by or consigned to YOU as of the last business day of that month.

THE MOST WE WILL PAY – Regardless of the number of AUTOS insured, the most WE will pay for any one LOSS to COVERED AUTOS is the least of the following:

(a) the total cost of all COVERED AUTOS;

(b) with respect to COVERED AUTOS owned by or consigned to YOU, the percentage the last report of AUTO values (received by US prior to the LOSS) bears to the cost of all such AUTOS that YOU should have reported;

(c) from TRICK AND DEVICE, the limit stated in the declarations for that peril;

(d) for property of others, as defined in CUSTOMER'S AUTOS, up to $5,000;

(e) from all other causes of LOSS, the limit stated in the declarations.

WE WILL ALSO PAY – In addition to payments in THE MOST WE WILL PAY provision, WE will also pay:

(a) up to $20 a day, but not for more than $600, for incurred loss of use of a CUSTOMER'S AUTO, DEMONSTRATOR-COMPANY AUTO, or SERVICE AUTO;

(b) all ordinary and necessary expenses to return a stolen COVERED AUTO to YOU;

HOW WE WILL PAY – At OUR option, WE will pay for, repair, or replace the damaged or stolen COVERED AUTO or will require YOU to replace, repair, or sublet repairs to such COVERED AUTO.

When YOU replace a COVERED AUTO, it will be at YOUR actual cost, exclusive of YOUR profit, holdback, or overhead expenses. When repairs are made to the COVERED AUTO, the most WE will pay is 65% of the retail charges on parts, materials, and labor unless stated otherwise in the declarations.

From the amount of LOSS, as determined above, WE will subtract the applicable deductible shown in the declarations.

Before payment of the LOSS, WE may take all or any part of the salvage at the agreed or appraised value. There will be no abandonment to US.

YOUR DUTIES AFTER LOSS – YOU must:

(a) protect the COVERED AUTO whether or not this insurance applies. Any further LOSS due to YOUR failure to do so will not be covered by this policy. WE will pay all reasonable expenses YOU incur for such protection;

(b) notify US as soon as possible. If an AUTO is stolen, notify the police and, if a TRICK AND DEVICE, also obtain a warrant for the arrest of person(s) procuring the evidence of title to or possession of the COVERED AUTO;

(c) permit US to inspect the damaged COVERED AUTO prior to its repair or replacement, and submit to US a sworn proof of LOSS within 60 days;

(d) cooperate and assist US in the investigation, settlement, defense, enforcement of contribution or indemnification of any LOSS.

You may not, except at YOUR expense, make any offer or payment, assume any obligation or incur any expenses unless otherwise permitted in this Coverage Part.

DAMAGED AUTO – When the COVERED AUTO is damaged, whether or not such damage is covered by this Coverage Part, OUR liability is reduced by the amount of such damage until repairs have been completed.

NO BENEFIT TO BAILEE – This insurance will not benefit, directly or indirectly, any carrier or bailee.

OTHER INSURANCE – This insurance is primary over any other insurance except when the COVERED AUTO is in the care, custody, or control of any person or organization, other than YOU, a member of YOUR household,

YOUR partner, director, stockholder, executive officer, or paid employee or a member of the household of any of them.

POLICY TERRITORY – This insurance covers anywhere in the United States of America, its territories or possessions, or Canada.

UNICOVER COVERAGE PART 330 PROPERTY

INSURING AGREEMENT-WE will pay for LOSS to the property scheduled at the LOCATIONS designated in the declarations from any cause, except as excluded or as stated otherwise in the declarations.

DEFINITIONS-When used in this Coverage Part:

"ACTUAL CASH VALUE" means, with respect to:

(a) BUILDING or EQUIPMENT, its replacement cost less actual (not tax) depreciation;

(b) STOCK, the amount YOU paid to acquire the property;

(c) Property of Others, only the amount for which YOU are legally liable, but not more than its actual cash value at the time of LOSS;

(d) Records-the cost of blank books, cards, tapes, wires, and other blank materials;

(e) IMPROVEMENTS AND BETTERMENTS, the actual cost of the repairs or replacement, if YOU repair or replace the damaged property at YOUR own expense within a reasonable time after the LOSS. If YOU do not repair or replace within a reasonable time, ACTUAL CASH VALUE will be determined by multiplying the original cost

of the improvement or betterment by the unused portion of YOUR lease. The unused portion is the percentage relationship between the amount of time left on YOUR lease at the time of LOSS and the amount of time left on YOUR lease when YOU made the improvement.

"AUTO" means any type of land motor vehicle, (whether crated or not), trailer or semi-trailer, farm tractor or implement, each including its equipment and other equipment permanently attached to it.

"BUILDING" means the structure at the LOCATIONS shown in the declarations. It includes machinery, equipment, materials, and supplies, necessary for its service or maintenance (if owned by YOU or in YOUR care, custody, or control) and attached to, inside of, or within 50 feet of the structure. It also means fences, signs, and light posts, owned by YOU and within 1,000 feet of the structure.

"CONTENTS" means STOCK and EQUIPMENT.

"EMPLOYEE TOOLS" means tools owned by YOUR employees while used in YOUR business or when in YOUR BUILDING.

"EQUIPMENT" means furniture, fixtures, machinery, equipment, fences, light posts, signs, materials, and supplies used in the conduct of YOUR business, either owned by YOU or for which YOU are legally liable. If YOU do not own the BUILDING in which the EQUIPMENT is contained, it also includes IMPROVEMENTS and BETTERMENTS. EQUIPMENT does not include property as defined in AUTOS, BUILDING, EMPLOYEE TOOLS, or STOCK.

"GARAGE OPERATIONS" means the ownership, maintenance, or use of that portion of any premises where YOU conduct YOUR AUTO business, and all other operations necessary or incidental thereto.

"IMPROVEMENTS AND BETTERMENTS" mean (1) YOUR use interest in changes (other than maintenance) YOU made in a BUILDING not owned by YOU which enhances its value, or (2) a BUILDING YOU have not otherwise insured that is situated on land YOU lease, but in either event not removable by YOU.

"LOCATION" means the premises scheduled in the declarations, including any insured STOCK (except watercraft) or EQUIPMENT in the open within 1,000 feet.

"LOSS" means direct physical loss or damage, in excess of the deductible amount stated in the declarations, occurring during the Coverage Part period.

"SPECIFIED PERILS" means LOSS caused by fire, lightning, smoke, explosion, windstorm, hail, vandalism, malicious mischief, riot, civil commotion, accidental sprinkler leakage or discharge, aircraft or its falling parts, removal of covered property from LOCATIONS endangered by an insured peril. It also means actual physical contact of an AUTO with the insured property unless it is an AUTO (1) owned by YOU, (2) operated by YOU or any of YOUR partners, officers, directors, stockholders, employees, agents or YOUR tenants, or (3) that damages fences, driveways, walks or lawns.

"STOCK" means goods or products, either owned by YOU or for which YOU are legally liable. It also means

parts and materials YOU have installed in YOUR customer's AUTOS, if LOSS occurs before YOU relinquish possession of the AUTO to the customer. "STOCK" does not include property as defined in AUTOS, EMPLOYEE TOOLS, or EQUIPMENT.

"UNNAMED PERILS" means all causes of LOSS not defined in SPECIFIED PERILS.

EXCLUSIONS-PERILS-WE will not pay for LOSS caused by, resulting from, contributed to or aggravated by:

(a) theft or larceny caused by YOUR voluntarily parting with evidence of ownership or possession of the insured property, when YOU are induced to do so by any criminal scheme, criminal trick, criminal device, or criminal false pretense;

(b) any dishonest, fraudulent, criminal or intentional act committed by (1) YOU or any of YOUR partners, executive officers, employees, stockholders, agents, other party in interest, (2) any person or organization to whom YOU entrust the property;

(c) confiscation by duly constituted governmental or civil authority, or due to any legal proceedings;

(d) radioactive contamination or the explosion of a nuclear weapon or device, or their consequences;

(e) wear or tear, shrinkage, evaporation, gradual deterioration, rust corrosion, change of weight, leakage of contents, inherent vice, latent defect, mechanical breakdown or derangement;

(f) interruption of business, delay, reduction of market or use;

(g) insects or vermin, dampness or dryness of atmosphere, extremes or changes in temperature, interruption of heating, refrigeration or cooling;

(h) marring or scratching of property in the open, exposure to light, contamination, change in color, flavor, texture or finish. This exclusion does not apply to LOSS caused by a SPECIFIED PERIL;

(i) animals, birds, mould, wet or dry rot; smog, smoke, vapor or gas from agricultural or industrial operations; settling, cracking, shrinkage, bulging or expansion of pavements, foundations, walls, floors, roofs, or ceilings. This exclusion does not apply to LOSS caused by fire or lightning;

(j) due and confined to faulty workmanship or materials in making alterations, repairs, or installations;

(k) earth movement, including but not limited to earthquake, volcanic eruption, landslide, mudflow, earth sinking, rising, or shifting. If fire or explosion follows, WE will pay only for the LOSS by fire or explosion. This exclusion does not apply to property in transit;

(l) consequential LOSS of any nature, any unexplained or mysterious disappearance, or shortage disclosed by the taking of an inventory;

(m) electrical injury, disturbance, or arcing to electrical appliances, devices, fixtures, or wiring caused by artificially generated electrical currents. If fire or explosion follows, WE will pay only for the LOSS by fire or explosion.

(n) flood, surface water, waves, tidal wave or water, overflow of streams or other bodies of water, or spray

from any of them whether or not driven by wind; water that backs up through sewers or drains, underground water that exerts pressure on, flows, seeps or leaks through sidewalks, driveways, foundations, walls, basement and other floors, or through doors, windows, or any opening in any of them. If fire or explosion follows, WE will pay only for the LOSS by fire or explosion;

(o) rain, snow or sleet to property in the open. This exclusion does not apply to BUILDINGS or YOUR property in the custody of a carrier for hire;

(p) WAR;

(q) explosion, rupture, or bursting of any of the following if they are owned by or leased to YOU or operated under YOUR control;

(1) water pipes, pressure relief devices, boilers or other equipment for heating water;

(2) rotating or moving parts of machinery by centrifugal force or mechanical breakdown;

(3) steam boilers, steam pipes, steam turbines, or steam engines;

WE will pay for LOSS by any fire or explosion that follows.

Part (3) does not apply to the explosion of accumulated gas or unconsumed fuel in the firebox or combustion chamber of a fired furnace, or in the flues or passages leading from it.

(r) enforcement of any local or state ordinance or law regulating:

(1) any cost of demolition or clearing the site of undamaged portion of the BUILDING;

(2) any greater cost of repair, construction, or reconstruction.

EXCLUSIONS-PROPERTY-WE will not pay for LOSS to:

(a) AUTOS, aircraft, animals, growing crops;

(b) growing plants, other than those used to decorate the interior of a BUILDING;

(c) plumbing, heating, air conditioning or fire protective systems or other similar equipment or appliances (or for leakage or overflow of any of them) caused by or resulting from freezing while the BUILDING(S) is vacant or unoccupied. This exclusion does not apply if YOU do everything YOU can to keep the BUILDING heated or water bearing systems have been drained and the water supply shut off;

(d) coins, currency, notes, securities, stamps, accounts, bills, evidences of debt, letters of credit, passports, tickets;

(e) watercraft (1) over 35 feet in length; or (2) when used for non-business purposes;

(f) valuable papers, deeds, abstracts of deeds, and documents of any kind. This exclusion does not apply to books of records, manuscripts, drawings, card index systems or other records;

(g) gold, silver, platinum, and other precious metals and alloys (or any objects made of or containing any of them), or bullion; furs, jewels, jewelry, watches, pearls, precious or semi-precious stones; wearing apparel or personal effects;

(h) property YOU sold on an installment or other deferred payment basis, after it has been delivered to the customer;

(i) glassware, statuary, bric-a-brac, marble, porcelain, ceramics, any other fragile or brittle property. This exclusion does not apply to LOSS caused by the SPECIFIED PERILS, other than vandalism or malicious mischief;

(j) radio or television antenna or tower over 25 feet in height from the ground or surface where it is anchored;

(k) fences, pavements, swimming pools and related equipment, retaining walls, bulkheads, piers, wharves, or docks, if LOSS is caused by freezing or thawing, impact of watercraft, or by pressure or weight of ice or water, even if driven by wind;

(l) property, other than BUILDINGS, YOU rent or lease to others, once they have custody of the property;

(m) interior of a BUILDING if LOSS is caused by rain, snow, sand, or dust, even if wind driven. This exclusion does not apply if it comes through an opening in the roof or walls caused by vehicle, a SPECIFIED PERIL, or collapse of the roof by weight of ice or snow on it;

(n) property once it reaches the Post Office;

(o) rents or rental value of any property;

(p) overhead charges or prospective profits of any kind;

(q) BUILDINGS in process of demolition or moving;

(r) a BUILDING that has been vacant or unoccupied over sixty consecutive days. This exclusion does not

apply if the BUILDING is described in Item 2 of the declarations as "vacant" or "unoccupied".

YOU MUST REPORT-Within 30 days after the end of each calendar month, YOU must report the ACTUAL CASH VALUE of all property (indicated in the declarations as "RPTD") as of the last business day of that month.

THE MOST WE WILL PAY-LOSS payment will not reduce the amount of insurance under this coverage Part. The most WE will pay for any one LOSS, to the property at the LOCATIONS scheduled in the declarations, is the least of the following:

(a) the ACTUAL CASH VALUE of repairs to the property with like kind and quality;

(b) the ACTUAL CASH VALUE of replacement for the property with like kind and quality;

(c) if the property is to be reported, the percentage the last report (received by US prior to the LOSS) bears to the ACTUAL CASH VALUE of such property that should have been reported;

(d) if WE have not received YOUR first report, when due, 75% of the limit stated in the declarations for the property at the LOCATION;

(e) if the property is subject to a coinsurance percentage, as shown in the declarations, LOSS will be determined by the Coinsurance Condition of this Coverage Part;

(f) the limit stated in the declarations for the LOCATION.

Regardless of the value reported by YOU, LOSS cannot exceed the limit for such property as stated in the declarations.

COINSURANCE-WE will determine the ACTUAL CASH VALUE of the insured property at the time of LOSS, multiply it by the coinsurance percentage (shown in the declarations for the property) to obtain the "proper amount" of insurance YOU should have purchased. WE will divide the limit for the property by the "proper amount" to obtain the "recovery ratio". WE will multiply the LOSS by the "recovery ratio" to determine the amount payable.

If the LOSS is less than 2% of the total amount of insurance YOU have on the damaged property, WE will not require an inventory of the undamaged property to establish the ACTUAL CASH VALUE of the insured property. This will not waive the application of this Condition.

DEDUCTIBLES-If YOU have a LOSS that involves more than one peril insured, BUILDING, LOCATION, or item of property, WE will apply one deductible to the LOSS. That deductible will be the largest one applicable to the LOSS.

DEBRIS REMOVAL-WE will pay the cost of removing debris following a LOSS. WE will not pay more than the applicable limit, as stated in the declarations, for the entire LOSS including the cost of debris removal. The cost of removal will not be included in determining the ACTUAL CASH VALUE under the Coinsurance Condition.

Special LIMITS APPLICATIONS-YOU can use part of the limits stated in the declarations to cover similar property. This special extension is a part of and not in addition to those limits. YOU can use:

If BUILDING(S) is insured:

(a) up to 25% of the total limits for all insured BUILDINGS, but not for more than $100,000, to apply to:

(1) materials and supplies used in making alterations or additions to BUILDING(S) scheduled in the declarations. This extension applies only to LOSS caused by a SPECIFIED PERIL;

(2) BUILDING(S) purchased, rented, or leased by YOU for use in YOUR GARAGE OPERATIONS. If YOU are not required to insure the rented or leased BUILDING, this extension provides only coverage as afforded by Endorsement No. 020.

YOU must tell US within 60 days of the purchase, rental, lease, or start of alterations or additions, and pay premiums due from the first day. Failure to do either will nullify this extension.

(b) up to $2,500 for trees, shrubs, lawns, or growing plants used for outside decoration at the LOCATIONS insured. This extension is limited to $250 per tree, shrub, or growing plant. Exclusion (b) of EXCLUSIONS-PROPERTY does not apply to this extension.

If BUILDING OR CONTENTS are insured:

Up to $250 for YOUR liability for fire department service charges made by a city, municipality, or fire protection district to respond to a fire at or exposing YOUR LOCATION which is outside their limits. This extension applies only to the service charge, not to any liability for injury to any person or property from any cause.

If CONTENTS, STOCK, or EQUIPMENT are insured:

(a) up to 10% of the total limits for such insured property, but not for more than $50,000, to apply to such property in BUILDING(S) YOU purchase, rent, or lease for use in YOUR GARAGE OPERATIONS;

(b) up to 10% of the limit for such insured property of the LOCATION, but not for more than $10,000, to apply to damage to the BUILDING at the LOCATION caused by thieves. This extension applies only if YOU do not own the BUILDING and are legally liable for such LOSS.

You must tell US within 60 days from the date YOU place the property in the BUILDING(S), and pay premiums due from the first day. Failure to do either will nullify this extension.

If CONTENTS or EQUIPMENT is insured:

(a) up to $10,000 on EQUIPMENT rented by YOU to others. Exclusion (l) of EXCLUSIONS-PROPERTY does not apply to this extension;

(b) up to $2,500 on personal property owned by YOU or any of YOUR partners, officers, or employees used to decorate or service the

LOCATION. This extension is limited to $250 per person per LOSS;

(c) up to $2,500 on valuable papers, deeds, abstracts, books, maps, films, or mortgages. Exclusion (f) of EXCLUSIONS-PROPERTY does not apply to this extension;

(d) up to 10% of the total limits for such insured property, but not for more than $10,000, to apply to EMPLOYEE TOOLS. This extension is subject to the following:

(1) this extension does not apply if EMPLOYEE TOOLS is an item of property already insured at any LOCATION;

(2) only the SPECIFIED PERILS apply;

(3) coverage is limited to $500 per employee per LOSS.

The Coinsurance Condition of this Coverage Part does not apply to these extensions.

WE WILL ALSO PAY-In addition to the limits stated in the declarations of CONTENTS, STOCK, or EQUIPMENT, WE will also pay up to $25,000 for LOSS to such property:

(a) while in transit; or

(b) within the Policy Territory of this Coverage Part at premises not owned, rented, leased or controlled by YOU.

HOW WE WILL PAY-At OUR option, WE will pay for, repair, or replace the damaged or destroyed property. WE will advise YOU of OUR option within 30 days after WE receive YOUR sworn proof of LOSS. Before payment of LOSS, WE may take all or any part of the salvage at the agreed or appraised value. There will be no abandonment

to US. Once the amount of LOSS payment is determined, WE will pay either YOU or the owner of the property within 60 days of OUR receipt of YOUR sworn proof of LOSS.

YOUR DUTIES AFTER LOSS-YOU must:

(a) protect the property whether or not this insurance applies. Any further LOSS due to YOUR failure to do so will not be covered by this insurance. WE will pay all reasonable expenses YOU incur for such protection;

(b) notify US as soon as possible. If LOSS is caused by theft or burglary, also notify the police;

(c) permit US to inspect the damaged property prior to its repair or replacement, and submit to US a sworn proof of LOSS within 60 days;

(d) cooperate and assist US in the investigation, settlement, defense, enforcement of contribution or indemnification of any LOSS. YOU may not, except at YOUR expense, make any offer or payment, assume any obligation or incur any expenses unless otherwise permitted by this Coverage Part.

WAIVER OF SUBROGATION-YOU must protect YOUR right of recovery against others, but YOU can:

(a) give others a written release from any responsibility for LOSS to the property, if the release is given prior to the LOSS;

(b) accept the usual documents from a shipper, even if they limit the carrier's liability for LOSS.

NO BENEFIT TO BAILEE-This insurance will not benefit, directly or indirectly, any carrier or bailee.

POLICY TERRITORY-This insurance covers anywhere in the United States of AMERICA, its territories or possessions, or Canada. With respect to watercraft, this insurance also covers while the watercraft is afloat within six nautical miles from the coastal shoreline of the 48 contiguous United States, the District of Columbia, or Canada.

UNICOVER COVERAGE PART 380
CRIME

INSURING AGREEMENT – WE will pay for LOSS as defined as follows:

EMPLOYEE DISHONESTY – WE will pay for LOSS of MONEY, SECURITIES, and other property which YOU sustain resulting directly from any fraudulent or dishonest act committed by an EMPLOYEE with manifest intent to:

(a) cause YOU to sustain such a LOSS, and;

(b) obtain financial benefit for the EMPLOYEE, or any other person or organization intended by the EMPLOYEE to receive such benefit other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions, and other EMPLOYEE benefits earned in the normal course of employment.

LOSS FROM WITHIN THE BUILDING – WE will pay for LOSS:

(a) of MONEY and SECURITIES by the actual destruction, disappearance, or wrongful removal from the BUILDING or any BANK;

(b) of other property by SAFE BURGLARY, ROBBERY from the BUILDING or attempt thereat;

(c) to a locked cash drawer, cash box or cash register by illegal entry into such container within the BUILDING, wrongful removal of such container from the BUILDING or an attempt thereat of either;

(d) for damage to the BUILDING caused by (a) (b) or (c) if YOU are the owner or are liable for the damage.

LOSS OUTSIDE THE BUILDING – WE will pay for LOSS of the following:

(a) MONEY and SECURITIES by the actual destruction, disappearance or wrongful taking while being conveyed outside the BUILDING by a MESSENGER, including while within the home of any MESSENGER;

(b) other property by ROBBERY, or attempt thereat, while being conveyed outside the BUILDING by a MESSENGER, including by theft within the home of any MESSENGER.

MONEY ORDERS AND COUNTERFEIT PAPER CURRENCY – WE will pay for LOSS:

(a) if YOU accept, in good faith, in exchange for merchandise, MONEY, or services, any money order issued or alleged to have been issued by any Post Office or express company, if such money order is not paid when presented;

(b) due to YOUR acceptance, in good faith, in the regular course of business, counterfeit United States or Canadian currency.

DEPOSITOR'S FORGERY – WE will pay for LOSS, in excess of the deductible stated in the declarations, which YOU or the BANK included in YOUR proof of LOSS and

that carries YOUR checking or savings account(s), sustains due to forgery or alteration of a negotiable instrument:

(a) made or drawn upon YOU, or by YOU or anyone acting as YOUR agent;

(b) purported to have been made or drawn as stated in (a) above.

WE will pay only YOU, unless YOU are fully reimbursed by the BANK; then, WE will pay the BANK.

If YOU or the BANK are sued by another to enforce payment of such an instrument, believed by YOU or the BANK to be forged or altered, WE will at OUR option, pay for reasonable attorney's fees, court costs, or similar legal expenses incurred and paid by YOU or the BANK. These expenses will not increase the limit shown in the declarations.

EXTORTION – WE will pay for LOSS, away from the BUILDING, due to the surrender of MONEY, SECURITIES, or other property as a result of a threat communicated to YOU to do bodily harm to YOU, or any of YOUR directors, trustees, executive officers, partners, EMPLOYEES or a relative or invitee of any of them who is or allegedly is being held captive.

Before such property is surrendered, the person receiving the threat must make a reasonable effort to report the extortionist's demands to an associate, the Federal Bureau of Investigation, and local law enforcement authorities.

DEFINITIONS – When used in this Coverage Part:

"BANK" means the interior of any building occupied by a banking institution for conducting its business, or any similar recognized place of safe deposit.

"BUILDING" means the interior of any structure shown in the declarations as applicable to this Coverage Part.

"CUSTODIAN" means any person in YOUR regular service authorized to have care and custody of YOUR property within the BUILDING.

"EMPLOYEE" means an individual while employed by YOU (and under EMPLOYEE DISHONESTY and DEPOSITOR'S FORGERY, 30 days thereafter) during the Coverage Part period while in YOUR regular service and in the ordinary course of YOUR business, and who is paid a salary, wage, or commission. EMPLOYEE does not mean anyone:

(1) YOU do not control or direct as to details and means by which the result is accomplished; or

(2) who owns the majority of stock or an amount equal to the largest amount owned by any other stockholder; or

(3) who is corporate director or trustee not performing the duties of an EMPLOYEE; or

(4) relatives of any partner, proprietor or person defined in (2) above; or

(5) outside the Policy Territory.

"LOSS" means loss or damage as defined in the Insuring Agreement.

"MESSENGER" means any person who is duly authorized by YOU to have care and custody of YOUR property outside the BUILDING.

"MONEY" means currency, coins, bank notes, bullion, travelers checks, register checks and money orders held for sale to the public.

"ROBBERY" means the felonious taking of property (other than MONEY or SECURITIES) from a MESSENGER or CUSTODIAN or from their presence without their consent by actual or constructive force or from them if they are killed or rendered unconscious.

"SAFE BURGLARY" means the felonious taking of (1) a safe from the BUILDING, or (2) property (other than MONEY or SECURITIES) from within a vault or safe that is in the BUILDING and (a) equipped with a combination lock, (b) all doors are locked and all combinations locked, and (c) there is evidence of forcible entry into the safe or vault.

"SECURITIES" means instruments or contracts representing MONEY or other property including revenue and other stamps in current use, tokens, and tickets, but not MONEY.

EXCLUSIONS – WE will not pay for LOSS:

(a) under EMPLOYEE DISHONESTY or DEPOSITOR'S FORGERY, due to any fraudulent, dishonest or criminal act committed by or involving any owner, officer, partner, or their relatives. This exclusion does not apply, under EMPLOYEE DISHONESTY, to any officer who does not own the majority of stock or an amount equal to the largest amount owned by any other stockholder;

(b) under LOSS FROM WITHIN THE BUILDING and LOSS OUTSIDE the BUILDING, due to any fraudulent, dishonest, or criminal act committed by or involving an owner, officer, partner, director, trustee, EMPLOYEE, or authorized representative, whether working or not. This exclusion does not apply to SAFE BURGLARY or ROBBERY or attempts thereat by other than YOU or YOUR partner;

(c) of MONEY contained in any coin operated device or machine;

(d) due to (1) the giving or surrendering of MONEY or SECURITIES in any exchange or purchase, or (2) accounting or arithmetical errors or omissions;

(e) by fire. This exclusion does not apply to MONEY, SECURITIES, a safe or vault;

(f) due to radioactive contamination or the explosion of a nuclear weapon or device or their consequences;

(g) due to WAR;

(h) of manuscripts, books of accounts, or records;

(i) under EMPLOYEE DISHONESTY, to that part of any LOSS, dependent upon an inventory computation or a profit and loss computation;

(j) due to the surrender of MONEY, SECURITIES or other property away from the BUILDING as a result of a threat to do (1) bodily harm to any person or (2) damage to the BUILDING or property owned by YOU or in YOUR care, custody, or control. This exclusion does not apply under:

LOSS OUTSIDE THE BUILDING, while being conveyed by a MESSENGER when there was no knowledge by YOU of such a threat at the time such MONEY, SECURITIES, or other property was surrendered to the MESSENGER, or EXTORTION, with respect to bodily harm to any person;

(k) due to loss of use of the MONEY, SECURITIES, or other property, or for costs, fees or other expenses incurred by YOU in establishing the existence or amount of LOSS.

CONDITIONS APPLYING TO EMPLOYEE DISHONESTY and DEPOSITOR'S FORGERY ONLY:

1. DISCOVERY – LOSS is covered only if discovered not later than one year from the end of the Coverage Part period. Subject to Condition 3:

(a) EMPLOYEE DISHONESTY applies only to LOSS during the Coverage Part period caused by an EMPLOYEE while within the Policy Territory, or elsewhere for a limited period;

(b) DEPOSITOR'S FORGERY applies only to LOSS during the Coverage Part period.

2. JOINT INSURED – If YOU consists of more than one named person or organization, the first named will represent all of them for the purposes of this Coverage Part. Knowledge possessed or discovery made by any of them, or a partner or officer, will constitute knowledge possessed or discovery made by all of them with respect to Conditions 5, 6, and 12.

If insurance is cancelled as to any EMPLOYEE (as provided in Condition 12) the cancellation applies to all

named persons or organizations. If this Coverage Part or any Insuring Agreement is cancelled or terminated as to any person or organization included in YOU, LOSS will be covered for them only if discovered not later than one year from the date of the cancellation or termination.

OUR payment of LOSS to the first named person or organization constitutes payment to all named persons or organizations included in YOU. If the first named person or organization is no longer covered, the next named will become the first named.

3. LOSS UNDER PRIOR BOND OR POLICY – If EMPLOYEE DISHONESTY replaces a bond or policy carried by YOU (or YOUR predecessor in interest) that is no longer in effect, WE will pay for LOSS (subject to Condition 1) if LOSS would have been covered by the prior bond or policy except that the LOSS was not discovered in the Discovery Period of the prior bond or policy. Provided, however:

(a) this extension is part of and not in addition to the limit stated in the declarations for EMPLOYEE DISHONESTY;

(b) the LOSS would have been covered had this insurance been in effect when the act or event causing the LOSS took place;

(c) LOSS recovery is limited to the least of the following:

(1) the amount recoverable at the time coverage was replaced by this insurance had it been in force at the time the act or event took place;

(2) the amount recoverable if the prior bond or policy had continued in force until the discovery of the LOSS.

DEPOSITOR'S FORGERY will cover LOSS at any time prior to termination or cancellation of this insurance that would have been covered by any similar forgery insurance (except fidelity insurance) YOU (or YOUR predecessor in interest) carried, if the prior forgery insurance afforded the same coverage as this DEPOSITOR'S FORGERY. Provided, however:

(a) that YOU (or YOUR predecessor in interest) had continuous applicable forgery coverage from the date LOSS was sustained to the date this insurance replaced the prior forgery coverage;

(b) at the time the LOSS was discovered, the period of discovery in the prior forgery insurance had expired, and

(c) LOSS recovery is limited to the least of the following:

(1) the limit for DEPOSITOR'S FORGERY, or

(2) the limit of the prior forgery insurance at the time of LOSS.

4. OWNERSHIP-INTERESTS COVERED – The insured property may be owned by YOU, held by YOU (whether or not YOU are legally liable for LOSS) or may be property for which YOU are legally liable for LOSS.

5. PRIOR FRAUD, DISHONESTY, or CANCELLATION – EMPLOYEE DISHONESTY insurance does not apply to any EMPLOYEE:

(a) from the moment YOU or any of YOUR partners or officers (not in collusion with such EMPLOYEE) knows or hears of any fraudulent or dishonest act committed by the EMPLOYEE, whether or not in YOUR service at the time of the act;

(b) who has been cancelled, excluded, or deleted from any prior fidelity insurance and was not reinstated in such insurance before this insurance became effective.

6. YOUR DUTIES AFTER LOSS – When YOU learn of or discover a LOSS, or what YOU believe to be a LOSS, YOU must tell US as soon as possible and submit a sworn proof of LOSS to US within four months of the discovery of the LOSS. When WE request, YOU must file a brief statement giving the particulars of the LOSS even if the amount does not exceed the deductible stated in the declarations for the Insuring Agreement.

Under DEPOSITOR'S FORGERY, YOUR sworn proof of LOSS must include all instruments on which YOU base the claim. If YOU can't produce them, WE will accept an affidavit from YOU, or the BANK where deposited, stating the amount and cause of LOSS.

YOU must cooperate and assist US in the investigation and settlement of any claim or LOSS, permit US to inspect all pertinent records whenever and wherever WE require. When WE request, submit to examination by US, under oath and signed, if we require.

7. VALUATION – HOW WE WILL PAY – SECURITIES will be valued at their actual cash value at the close of the last business day before the LOSS was discovered. With respect to other property held by YOU as a pledge or

collateral on an advance or loan, the value will be the actual cash value of the property as determined by YOU at the time the advance or loan was made. If the value was not a part of YOUR records, then WE will pay the unpaid part of the advance or loan, plus accrued interest at legal rates.

WE may, with YOUR consent, settle any LOSS with the owner of the property. Any property for which WE have made indemnification will become OURS. AT OUR option, WE may pay for, repair, or replace the property.

The most WE will pay for property (other than SECURITIES) is the least of the following:

(a) the actual cash value at the time of LOSS;

(b) the actual cost to repair with like kind and quality;

(c) the actual cost to replace with like kind and quality.

8. RECOVERIES – If YOU sustain a LOSS which exceeds the limit, YOU are entitled to all recoveries (except those from suretyship, insurance, reinsurance, security or indemnification taken by or for OUR benefit) until YOU are fully reimbursed, less the expense of collecting them. Any remainder is OURS.

9. THE MOST WE WILL PAY – LOSS payment will not reduce OUR liability for other LOSSES. From the amount of LOSS, WE will deduct the net amount of all recoveries obtained or made by YOU (other than LOSS covered by any other bond or insurance) or US. If the net LOSS is in excess of the deductible stated in the declarations, and

regardless of the number of persons or organizations included in YOU, the most WE will pay:

(a) under EMPLOYEE DISHONESTY, is the limit stated in the declarations as applicable to a LOSS caused by one or more EMPLOYEES, or to all LOSS caused by one EMPLOYEE or in which the EMPLOYEE is concerned or implicated;

(b) under DEPOSITOR's FORGERY, is the limit stated in the declarations as applicable to all LOSS committed by any person or in which that person is concerned or implicated, regardless of the number of instruments forged or altered.

Regardless of the number of years this Coverage Part continues in force, the limit stated in the declarations is not cumulative from one period to another, or from one year to another.

10. THE MOST WE WILL PAY - OVERLAPPING INSURANCE - If a LOSS occurs partly during this Coverage Part period and partly in the discovery period of previous insurance WE issued to YOU (or YOUR predecessor in interest) that is no longer in effect, the most WE will pay for the total liability is the limit shown for the applicable Insuring Agreement or the limit of the prior insurance WE issued whichever is the largest. This will apply to LOSS caused by any person or EMPLOYEE or in which such person or EMPLOYEE is concerned or implicated, or which is chargeable to any EMPLOYEE as provided in Condition 13.

11. OTHER INSURANCE - This insurance is excess over any other insurance or indemnity covering the LOSS, except:

(a) if LOSS is covered by both DEPOSITOR's FORGERY and a fidelity bond or policy, DEPOSITOR'S FORGERY is primary;

(b) WE waive OUR right of contribution against any forgery insurance carried by any BANK indemnified by DEPOSITOR'S FORGERY.

12. CANCELLATION AS TO ANY EMPLOYEE – Coverage under EMPLOYEE DISHONESTY is canceled as to any EMPLOYEE:

(a) immediately upon discovery by YOU, or any partner or officer (not in collusion with the EMPLOYEE) of any fraudulent or dishonest act by such EMPLOYEE;

(b) as specified in any written notice of such cancellation WE send YOU in compliance with the General Conditions of this policy.

13. LOSS CAUSED BY UNIDENTIFIED EMPLOYEE – Coverage under EMPLOYEE DISHONESTY will apply (subject to Exclusion (i)) even if YOU cannot prove a specific EMPLOYEE(S) caused the LOSS. The evidence YOU submit, however, must reasonably prove the LOSS was caused by a fraudulent or dishonest act committed by an EMPLOYEE.

CONDITIONS APPLYING TO LOSS FROM WITHIN THE BUILDING, LOSS OUTSIDE THE BUILDING, MONEY ORDERS AND COUNTERFEIT PAPER CURRENCY, and EXTORTION ONLY:

14. OWNERSHIP-INTERESTS COVERED The insured property may be owned by YOU, held by YOU (whether

or not YOU are legally liable for LOSS) or may be property YOU are legally liable for LOSS. Provided, this insurance applies only to YOUR interest in the property, including YOUR liability to others, and does not apply to the interest of any other person or organization unless YOU include them in YOUR sworn proof of LOSS.

15. JOINT INSURED – If YOU consists of more than one named person or organization, the first named will represent all others for the purposes of this Coverage Part. Knowledge possessed or discovery made by any of them will constitute knowledge possessed or discovery made by all of them.

16. YOUR DUTIES AFTER LOSS – When YOU learn of or discover a LOSS, or what YOU believe to be a LOSS, YOU must tell US and the police as soon as possible and submit a sworn proof of LOSS to US within four months of the discovery of the LOSS.

YOU must cooperate and assist US in the investigation and settlement of any claim or LOSS, permit US to inspect all pertinent records whenever and wherever WE require. Also, furnish a complete inventory of all property not stolen or damaged. When WE request, YOU must submit to examination by US, under oath and signed if WE require.

17. OTHER INSURANCE – This insurance does not apply to any property (a) separately described or enumerated and specifically insured (in whole or in part) by other insurance, or (b) which YOU don't own or are legally liable for that has other insurance applicable. Otherwise, this insurance is excess over all other valid and collectible insurance.

18. NO BENEFIT TO BAILEE – This insurance will not benefit, directly or indirectly, any carrier or bailee.

CONDITIONS APPLYING TO LOSS FROM WITHIN THE BUILDING, LOSS OUTSIDE THE BUILDING, and MONEY ORDERS AND COUNTERFEIT PAPER CURRENCY ONLY:

19. THE MOST WE WILL PAY – HOW WE WILL PAY – The most WE will pay for LOSS is the least of the following:

(a) the actual cash value of the property at the time of LOSS;

(b) the actual cost to repair it with like kind and quality;

(c) the actual cost to replace it with like kind and quality;

(d) with respect to property held by YOU as a pledge or collateral on an advance or loan, the actual cash value of the property as determined by YOU at the time the advance or loan was made. If the value was not a part of YOUR records, then the unpaid part of the advance or loan, plus accrued interest at legal rates;

(e) with respect to LOSS FROM WITHIN THE BUILDING, $100 while MONEY or SECURITIES are not in a locked safe or vault when the BUILDING is closed for business;

(f) the limit stated in the declarations for the applicable Insuring Agreement.

At OUR option, WE may pay for, repair, or replace the property either with YOU or with the owner of the property. Any property replaced or paid for will become OUR

property. Any property recovered after payment of the LOSS will be applied to the expense of recovering it. Any remainder will be applied as if the LOSS had not been paid, and the LOSS readjusted accordingly. If YOU or WE recover any property, notice to the other must be made as soon as possible.

OUR limit will be reduced by the amount of LOSS until the BUILDING is restored to the same safe condition that existed just prior to the LOSS. This reduction of limit will not apply to any subsequent LOSS if YOU have a watchman in the BUILDING when you are not open for business, until the condition of the BUILDING is completely restored. OUR insurance will not be increased because the insurance applies to more than one person or organization.

20. SUPERSEDED INSURANCE – If YOU had continuous similar insurance that terminated with the beginning of this Coverage Part, LOSS (to the extent it is not insured by the prior insurance solely because of late discovery) will be deemed to have occurred on the first day of this Coverage Part period.

21. POLICY PERIOD – POLICY TERRITORY-DISCOVERY – LOSS is covered only if discovered not later than one year from the end of the Coverage Part period, and occurs during the Policy Period within the continental United States, Virgin Islands, Puerto Rico, or Canada.

CONDITIONS APPLYING TO EXTORTION ONLY –

22. THE MOST WE WILL PAY-HOW WE WILL PAY – From the amount of LOSS, WE will deduct the net amount of all recoveries obtained or made by YOU (other

than any LOSS covered by other insurance or bonds) or US. If the net amount is in excess of the deductible stated in the declarations, and regardless of the number of persons or organization included in YOU, the most WE will pay for LOSS in the least of the following:

(a) the actual cost to repair with like kind and quality:

(b) the actual cost to replace with like kind and quality;

(c) with respect to SECURITIES, their actual cash value at the close of the last business day before they were surrendered;

(d) with respect to other property, its actual cash value at the time it was surrendered;

(e) the limited [sic] stated in the declarations for EXTORTION.

LOSS Payment will not reduce OUR liability for other LOSSES. The limit stated in the declarations for this Insuring Agreement applies to all LOSS caused by acts of any person or in which that person is concerned or implicated.

At OUR option, WE may pay for, repair, or replace the property either with YOU or the owner of the property. Any property replaced or paid for will become OUR property. Any MONEY, SECURITIES, or other property recovered after payment of LOSS will be applied to the expense of recovering it. Any remainder will be applied as if the LOSS had not yet been paid, and the LOSS readjusted accordingly. If YOU or WE recover any property, notice to the other must be made as soon as possible.

23. POLICY PERIOD-POLICY TERRITORY-DISCOVERY – LOSS is covered only if the threat to do bodily harm is initially communicated to YOU during the Coverage Part period and the actual or alleged captivity takes place within the continental United States, Virgin Islands, Puerto Rico, or Canada.

UNICOVER COVERAGE PART 500
GARAGE INSURANCE

INSURING AGREEMENT – WE will pay all sums the INSURED legally must pay as damages (including punitive damages where insurable by law) because of INJURY to which this insurance applies caused by an OCCURRENCE arising out of GARAGE OPERATIONS or AUTO HAZARD.

WE have the right and duty to defend any suit asking for these damages. WE may investigate and settle any claim or suit WE consider appropriate. OUR payment of the limit shown in the declarations ends OUR duty to defend.

WE also have the right and duty to defend any suit asking for PRODUCT RELATED DAMAGES and LEGAL DAMAGES when such insurance is included in the declarations. WE may investigate any such suit, but settlement of such suits will be at YOUR option. All court costs and damages assessed against YOU will be at YOUR expense.

WE have no right or duty to defend suits for damages not covered by this Coverage Part.

DEFINITIONS – When used in this Coverage Part:

"ADMINISTRATION" means interpreting for or giving counsel to employees, handling records, effecting enrollment, termination or cancellations of employees, all

under YOUR employee benefits programs when such acts are authorized by YOU.

"AUTO" means a land motor vehicle, trailer or semi-trailer, other land equipment capable of moving under its own power, equipment for use with it, and animal drawn equipment.

"AUTO HAZARD" means the ownership, maintenance, or use of any AUTO YOU own or which is in YOUR care, custody or control and:

(1) used for the purpose of GARAGE OPERATIONS or

(2) used principally in GARAGE OPERATIONS with occasional use for other business or non-business purposes or

(3) furnished for the use of any person or organization.

"CUSTOMER'S AUTO" means an AUTO not owned by YOU but in YOUR care, custody or control for safekeeping, storage, service or repair.

"GARAGE OPERATIONS" means the ownership, maintenance or use of that portion of any premises where YOU conduct YOUR AUTO business and all other operations necessary or incidental thereto.

"HAULAWAY" means a conveyance designed solely for use in transporting four wheeled motor vehicles.

"INJURY"means with respect to:

Group 1 – bodily injury, sickness, disease or disability (including death resulting from any of these) or damage to or loss of use of tangible property;

Group 2 – mental anguish, mental injury, shock, discrimination or humiliation;

Group 3 – false arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution, libel, slander, defamation of character, invasion of rights of privacy or possession of personal property;

Group 4 – Plagiarism, piracy, copyright violation or false advertising in the course of or related to YOUR advertising, broadcasting or telecasting advertising;

Group 5 – claims made due to any negligent act, error or omission in the ADMINISTRATION of YOUR profit sharing, pension or employee stock subscription plans or YOUR group life, group accident and health, Worker's Compensation, unemployment, social security or disability benefits insurance.

"LEGAL DAMAGES" means any suit brought against YOU during the Coverage Part period by or on behalf of a customer arising out of GARAGE OPERATIONS because of an alleged violation of any federal, state or local odometer, truth-in-lending, truth-in-leasing or AUTO damage disclosure statute or law, other than as a result of an OCCURRENCE or as defined in PRODUCT RELATED DAMAGES.

"OCCURRENCE" means an accident, including continuous or repeated exposure to conditions, which results in INJURY during the Coverage Part period neither intended nor expected by the INSURED. All INJURY arising out of continuous or repeated exposure to substantially the same general conditions will be considered as arising out of one OCCURRENCE.

"PRODUCT" means the goods or products YOU make, sell, service, or repair in GARAGE OPERATIONS.

"PRODUCT RELATED DAMAGES" means any suit brought against YOU during the Coverage Part period by or on behalf of a customer arising out of the sale, service or repair of YOUR PRODUCT, other than as a direct result of an OCCURRENCE or as defined in LEGAL DAMAGES.

"WORK" means work YOU perform or work someone else performed for YOU.

WHO IS AN INSURED – With respect to GARAGE OPERATIONS, other than the AUTO HAZARD or INJURY as defined in Group 5:

1. YOU;

2. YOUR spouse, if YOU are a sole proprietorship;

3. Any of YOUR partners, paid employees, directors, executive officers, stockholders, while acting within the scope of their duties as such;

4. If YOU are a partnership or joint venture, any partner or member thereof, but only with respect to their liability as such.

With respect to the AUTO HAZARD:

1. YOU;

2. Any of YOUR partners, paid employees, directors, stockholders, executive officers, a member of their household or a member of YOUR household, while using an AUTO covered by this Coverage Part, or when legally responsible for its use. The actual use of the

AUTO must be by YOU or within the scope of YOUR permission;

3. Any other person or organization required by law to be an INSURED while using an AUTO covered by this Coverage Part within the scope of YOUR permission.

With respect to INJURY, as defined in Group 5:

1. YOU;

2. Any of YOUR partners, executive officers, directors, stockholders, or paid employees authorized by YOU to act in the ADMINISTRATION of YOUR Employee Benefits Programs.

With respect to PRODUCT RELATED DAMAGES and LEGAL DAMAGES, only YOU.

WHO IS NOT AN INSURED – With respect to the AUTO HAZARD, any INSURED (except YOU) with respect to an AUTO owned by them.

EXCLUSIONS – This insurance does not apply to:

(a) INJURY, PRODUCT RELATED DAMAGES or LEGAL DAMAGES, if caused by any dishonest, fraudulent, intentional or criminal act committed by any INSURED;

(b) any obligation for which an INSURED may be held liable under any Worker's Compensation or disability benefits law or under any similar law;

(c) any obligation of the INSURED to indemnify another for INJURY to the INSURED'S employee. This exclusion does not apply to a contract excepted in Exclusion (d)(1);

(d) liability assumed by any INSURED under any contract or agreement. This exclusion does not apply to:

(1) a written lease of premises, elevator maintenance agreement, or an easement or sidetrack agreement except in connection with construction or demolition operations on or adjacent to a railroad;

(2) any written contract or agreement in which YOU agree to indemnify or hold harmless any manufacturer, distributor or importer of AUTOS or watercraft with respect to YOUR negligent use, repair or servicing of AUTOS or watercraft;

(3) any other written contract or agreement (not applying to AUTOS or watercraft) in which YOU agree to indemnify or hold harmless any other person or organization with respect to YOUR negligent acts;

(e) any claim made or suit brought as a result of any extended warranty or mechanical breakdown agreement. This exclusion does not apply to bodily injury, sickness, disease, or disability (including death resulting from any of these) or damage to tangible property;

(f) INJURY, as defined in Group 1, to any employee of the INSURED arising out of and in the course of their employment by the INSURED. This exclusion does not apply;

(1) if the INJURY arises out of the operation or use of an AUTO by another employee;

(2) to domestic employees not entitled to Workers' Compensation benefits;

(g) INJURY arising out of YOUR business of serving, manufacturing, distributing or selling alcoholic beverages;

(h) INJURY arising out of the ownership, maintenance, use, loading or unloading of any;

(1) aircraft;

(2) AUTO, while:

(i) being used as a HAULAWAY;

(ii) operated in, or in practice or preparation for any prearranged or organized race, rally, speed, demolition, or competitive contest or stunting activity;

(iii) leased or rented to others, except to:

(1) YOUR salesman for use principally in GARAGE OPERATIONS and AUTO HAZARD;

(2) YOUR customers for a term of two months or less when it temporarily replaces the CUSTOMER'S AUTO or when the customer is awaiting delivery of an AUTO purchased from YOU;

(iv) being used as a taxi cab, bus, public livery vehicle, emergency ambulance, long haul public freight carrier or for carrying property for a charge;

(v) being used to transport explosives, gasoline, liquefied petroleum gas or other volatile petroleum products;

Exclusions (iv) and (v) do not apply when the excluded class or operation constitutes a minor and incidental part of GARAGE OPERATIONS.

(3) Watercraft:

(i) Over 35 feet in length;

(ii) when used for non-business purposes;

(iii) when rented or leased to others;

(iv) while afloat over six nautical miles from the coastal shoreline of the 48 contiguous United States, the District of Columbia, or Canada;

(i) INJURY to:

(1) personal property, including AUTOS, owned by, rented or leased to or in the care, custody or control of, or being transported by the INSURED;

(2) real property not owned by YOU, but rented to, leased to or in the care, custody or control of YOU, except when INJURY is caused by an AUTO operated by an INSURED;

(3) plate glass in buildings owned by, rented or leased to YOU or in YOUR care, custody or control;

(j) loss of use of property not physically damaged, if caused by:

(1) YOUR delay or failure in performing any agreement or contract;

(2) the failure of YOUR PRODUCT or YOUR WORK to meet the quality warranted or the level of performance represented;

(k) labor costs caused by improper WORK or defective parts to:

(1) the improper WORK;

(2) other WORK performed at the same time as the improper WORK or defective PRODUCT if the improper WORK or defective PRODUCTS are on a necessary or customary part of the other WORK;

(l) INJURY or PRODUCT RELATED DAMAGES claimed because of the recall of YOUR PRODUCTS or YOUR WORK, or other property of which they form a part, due to a known or suspected defect or deficiency they contain;

(m) INJURY caused by the dumping, discharge or escape of irritants, pollutants or contaminants. This exclusion does not apply if the discharge is sudden and accidental;

(n) INJURY caused by the discharge, release, or escape of any petroleum substance into or upon any body of water or water course, regardless of the nature of the discharge, release, or escape (whether accidental or not);

(o) INJURY, as defined in Groups 3 and 4, if the first injurious offense was committed prior to the Coverage Part period;

(p) INJURY, as defined in Group 4, if caused by:

(1) the unavailability of or an incorrect description of a PRODUCT advertised;

(2) a mistake in the advertised price;

(3) an alleged breach of contract or failure to pay for advertising activities;

(q) INJURY, as defined in Group 5, if caused by:

(1) failure of performance by any insurer;

(2) an INSURED'S failure to comply with any Worker's Compensation, unemployment insurance, Social Security or disability benefits law or similar laws;

(3) failure of investments or assets to perform as represented by an INSURED;

(4) advise given by an INSURED to an employee to participate or not to participate in stock subscription plans;

(5) failure of any Employee Benefits program, for any reason;

(6) the investment or non-investment of funds;

(7) violation of any responsibilities, obligations, or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, its amendments, or by any common or statutory law of the United States or any state or jurisdiction therein;

(r) INJURY arising out of an INSURED'S activities as an insurance agent, broker or consultant;

(s) due to radioactive contamination or the explosion of a nuclear weapon or device or their consequences.

THE MOST WE WILL PAY– Regardless of the number of INSUREDS or AUTOS insured by this Coverage Part, persons or organizations, who sustain INJURY, claims made or suits brought, the most WE will pay is:

1. With respect to GARAGE OPERATIONS and AUTO HAZARD, the limit shown in the declarations for any one OCCURRENCE.

The portion of the limit applicable to persons or organizations required by law to be an

INSURED is only the amount (or amount in excess of any other insurance available to them) needed to comply with the minimum limits provision of such law in the jurisdiction where the OCCURRENCE takes place.

2. With respect to PRODUCT RELATED DAMAGES and LEGAL DAMAGES, $10,000 in defense costs for any one suit asking for such damages, but not for more than the limit shown in the declarations for the aggregate total of all such defense costs for these damages during the annual Coverage Part period.

DEDUCTIBLES – From the amounts payable under this Coverage Part, WE will deduct:

1. The deductible amount shown in the declarations for:

(a) INJURY to AUTOS arising out of YOUR WORK;

(b) INJURY to YOUR PRODUCT if caused by a defect existing in YOUR PRODUCT at the time possession was relinquished to the purchaser;

(c) INJURY to premises not owned by YOU but in YOUR care, custody or control;

(d) PRODUCT RELATED DAMAGES and LEGAL DAMAGES.

2. 25% of YOUR retail charges for labor, parts and materials when AUTOS are repaired by YOU.

3. $1,000 for any OCCURRENCE insured by INJURY as defined in INJURY Group 5.

WE WILL ALSO PAY – WE will pay for INJURY, in addition to OUR limit:

(a) all costs and expenses in defending an INSURED, and interest on any judgment that does not exceed OUR limit:

(b) premiums on appeal bonds or bonds to release property used to secure YOUR legal obligations, in a suit WE defend. Also, up to $250 for the cost of bail bonds required because of an OCCURRENCE, including related traffic law violations. WE do not have to furnish or secure these bonds;

(c) expenses YOU incur for first aid to anyone injured in an OCCURRENCE covered by this Coverage Part;

(d) up to $50 a day for loss of earnings (but not other income) because of attendance at hearings or trials at OUR request;

(e) other reasonable expenses incurred at OUR request.

INSURED'S DUTIES AFTER INJURY, OCCURRENCE, CLAIM OR SUIT – If there is an OCCURRENCE, the INSURED is sued, or claim is made against an INSURED:

1. Report this to US as soon as possible. Give US all the details YOU can, including where and how it happened, the names and address of persons involved, injured and any witnesses.

2. Promptly send US all documents, if any INSURED is sued or if claim is made against them;

3. Cooperate and assist US in the investigation, settlement, defense, enforcement of contribution

or indemnification. The INSURED may not, except at their own expense, make any offer or payment, assume any obligation or incur any expenses unless otherwise permitted in this Coverage Part.

OUT OF STATE EXTENSION – While an AUTO or watercraft insured by this Coverage Part is away from the state where YOU conduct GARAGE OPERATIONS, WE will:

1. increase this Coverage Part limits to meet those specified by any compulsory or financial responsibility law in the jurisdiction where the AUTO or watercraft is being used;

2. Provide the minimum amounts and types of other coverages, such as "No Fault", required of out-of-state AUTOS or watercraft by the jurisdiction where the AUTO or watercraft is being used.

WE will not pay anyone more than once for the same elements of INJURY because of these extensions.

OTHER INSURANCE – The insurance afforded by this Coverage Part is primary, except it is excess:

(1) for PRODUCT RELATED DAMAGES and LEGAL DAMAGES;

(2) for any person or organization who becomes an INSURED under this Coverage Part as required by law.

UNICOVER COVERAGE PART 900
BASIC AUTO INSURANCE

INSURING AGREEMENTS – WE will pay:

A. INJURY – all sums the INSURED legally must pay as damages (including punitive damages where insurable by law) because of INJURY to which this insurance applies, caused by an OCCURRENCE arising out of the ownership, maintenance, use, loading or unloading of an OWNED AUTO or TEMPORARY SUBSTITUTE AUTO.

WE have the right and duty to defend any suit asking for these damages. WE may investigate and settle any claim or suit WE consider appropriate. OUR payment of the limit shown in the declarations for this Coverage Part ends OUR duty to defend.

WE have no right or duty to defend suits for damages not covered by this Coverage Part.

B. MEDICAL PAYMENTS – all reasonable and necessary medical, dental, and funeral expenses (incurred within three years after the OCCURRENCE) to or for each person:

(1) who sustains INJURY caused by an OCCURRENCE while OCCUPYING an OWNED AUTO or TEMPORARY SUBSTITUTE AUTO being used by an INSURED;

(2) scheduled in the declarations pages (and residents of their household) who sustains INJURY caused by an OCCURRENCE while OCCUPYING or if struck by an AUTO other than a vehicle (a) operated on rails or crawler-treads, (b) while located for use as a residence or premises, or (c) which is a farm tractors [sic] or other equipment while off public roads.

C. PHYSICAL DAMAGE – for LOSS to an OWNED AUTO from any cause, except as excluded or as stated otherwise in the declarations.

DEFINITIONS – When used in this Coverage Part:

"AUTO" means any land motor vehicle, trailer or semi-trailer, designed for travel on public roads and includes its permanently attached equipment. "AUTO" does not include MOBILE EQUIPMENT.

"COLLISION" means (1) impact of the OWNED AUTO with another object (other than a bird or animal) or with a vehicle to which it is attached, or (2) upset of the OWNED AUTO.

"COMPREHENSIVE" means any cause of LOSS other than COLLISION.

"INJURY" means bodily injury, sickness, disease, or disability (including death resulting from any of these) or damage to or loss of use of tangible property.

"LEASE" means a written agreement for a term of 180 days or more wherein YOU are named as the lessee.

"LOSS" means direct and accidental loss or damage, including incurred loss of use, in excess of the deductible amount stated in the declarations, occurring during the Coverage Part period.

"MOBILE EQUIPMENT" means vehicles designed for use principally off public roads, those not required to be licensed, and AUTOS used solely on YOUR premises. It includes, but is not limited to, bulldozers, power shovels, rollers, graders, scrapers, and any other road construction repair equipment, farm machinery, cranes, forklifts,

pumps, generators, air compressors, drills, street sweepers, riggers, or vehicles used to provide mobility for any of these when permanently attached to the equipment.

"OCCUPYING" means being in, on, entering into, getting out or off of.

"OCCURRENCE" means an accident, including continuous or repeated exposure to conditions, which results in INJURY during the Coverage Part period neither intended nor expected by the INSURED. All INJURY arising out of continuous or repeated exposure to substantially the same general conditions will be considered as arising out of one OCCURRENCE.

"OWNED AUTO" means an AUTO YOU own or LEASE and is scheduled in the declarations, and any AUTO YOU purchase or LEASE as its replacement during the Coverage Part period. It also means any trailer designed for use with the type of AUTOS scheduled in the declarations. If WE insure all AUTOS YOU own or LEASE, additional AUTOS will be covered the day YOU purchase or LEASE them, if YOU notify US within the next 30 days.

"TEMPORARY SUBSTITUTE AUTO" means an AUTO YOU or a member of YOUR household do not own or LEASE, when it is used temporarily with the owner's permission to replace an OWNED AUTO which is out of service due to its repair, servicing, loss or destruction.

EXCLUSIONS –This insurance does not apply to:

(a) INJURY or LOSS caused by any dishonest, fraudulent, intentional, or criminal act committed by YOU,

YOUR stockholders, partners, employees, agents, other party in interest, or any other INSURED;

(b) liability assumed by any INSURED under contract or agreement;

(c) any obligation for which an INSURED may be held liable under any Worker's Compensation or disability benefits law or under any similar law;

(d) INJURY to any employee of the INSURED arising out of and in the course of their employment, or any obligation of the INSURED to indemnify another for INJURY to the INSURED'S employee. This exclusion does not apply to domestic employees not entitled to Worker's Compensation;

(e) under Insuring Agreement A, INJURY to property owned by, rented to, being transported by, or in the care, custody or control of the INSURED. This exclusion does not apply to a residence or private garage;

(f) INJURY or LOSS due to WAR;

(g) INJURY caused by the dumping, discharge, or escape of irritants, pollutants, or contaminants. This exclusion does not apply if the discharge is sudden and accidental;

(h) INJURY or LOSS arising out of the ownership, maintenance, use, loading or unloading of any AUTO while:

(1) operated in, or in practice or preparation for, any prearranged or organized race, rally, speed, demolition, or competitive contest or stunting activity;

(2) leased or rented to others;

(3) being used as a taxi cab, bus, public livery vehicle, emergency ambulance, long haul public freight carrier, or for carrying property for a charge;

(4) being used to transport explosives, gasoline, liquified petroleum gas, or other volatile petroleum products;

(i) under Insuring Agreement B, INJURY sustained while OCCUPYING or if struck by any AUTO YOU own or is furnished or available for YOUR regular use. This exclusion does not apply to an OWNED AUTO or a TEMPORARY SUBSTITUTE AUTO;

(j) under Insuring Agreement B, INJURY sustained while OCCUPYING or if struck by any AUTO owned by or furnished or available for use of any INSURED. This exclusion does not apply to YOU;

(k) INJURY or LOSS due to radioactive contamination, or the explosion of a nuclear weapon or device or their consequences;

(l) LOSS to tires due and confined to blowout, puncture, or other road hazards;

(m) LOSS due and confined to wear, tear, freezing, mechanical or electrical breakdown or failure;

(n) any device or instrument designed (1) for receiving and/or reproducing sound, (2) as a scanning monitor or radar detector, (3) as a Citizen's Band radio, two-way mobile radio or telephone, including their antennas and accessories. This exclusion does not apply to any such equipment permanently installed in the dash or console opening normally used by the AUTO manufacturer for

installation of a radio, or to any antenna permanently attached to the AUTO;

(o) LOSS due to confiscation by duly constituted governmental or civil authority;

(p) LOSS to a camper body designed to be mounted upon an AUTO and equipped as sleeping or living quarters. This exclusion does not apply if it is scheduled in the declarations.

WHO IS AN INSURED – With respect to this Coverage Part:

(1) YOU, including YOUR spouse if a resident of the same household;

(2) under Insuring Agreements A and B:

(a) YOUR partner or executive officer. If they are using a TEMPORARY SUBSTITUTE AUTO, it must be used in YOUR business;

(b) any other person using an OWNED AUTO or TEMPORARY SUBSTITUTE AUTO within the scope of YOUR permission, unless it is being loaded or unloaded. Only YOUR employee, a borrower, or a borrower's employee is an INSURED for loading and unloading;

(3) under Insuring Agreement A only, anyone else, but only as a result of their liability because of what an INSURED in (1) or (2) above does or fails to do.

WHO IS NOT AN INSURED – none of the following is an INSURED:

(1) The owner or lessor of an OWNED AUTO you LEASE. This does not apply if they are

named in the declarations as applicable to this Coverage Part;

(2) Any person engaged in the business of selling, repairing, servicing, storing or parking of AUTOS (including roadtesting and delivery) unless the person is YOU, a resident of YOUR household, or YOUR partner, executive officer, agent, or employee or a resident of the household of any of them.

THE MOST WE WILL PAY –

Under Insuring Agreement A – Regardless of the number of INSUREDS or AUTOS insured by this Coverage Part, persons or organizations who sustain INJURY, claims made or suits brought, the most WE will pay is the applicable limit shown in the declarations for any one OCCURRENCE.

Under Insuring Agreement B – The most WE will pay is the applicable limit as shown in the declarations. Any payment made under this agreement will be reduced by the amount paid or payable for the same expenses under any other insurance afforded by this policy.

No payment will be made under this agreement unless the injured person (or their legal representatives) agrees in writing that any payment made will be applied toward any settlement or judgment that person receives for the same expenses under any other AUTO liability or Uninsured Motorists Coverage provided by this policy.

Under Insuring Agreement C – The most WE will pay for any one LOSS to an OWNED AUTO is the least of the following:

(a) the actual cash value of the OWNED AUTO;

(b) the amount necessary to replace the OWNED AUTO with like kind and quality;

(c) the amount necessary to repair the OWNED AUTO or its parts with like kind and quality;

(d) the amount stated in the declarations for this Coverage Part.

Before payment of LOSS, WE may take all or any part of the salvage at the agreed or appraised value. There will be no abandonment to US.

WE WILL ALSO PAY – Under Insuring Agreement A, WE will pay, in addition to the limit:

(a) all costs and expenses in defending an INSURED, and interest on any judgment that does not exceed the limit;

(b) premiums on appeal bonds or bonds to release property used to secure YOUR legal obligations, in a suit WE defend, but only for bonds up to OUR limit. Also, up to $250 for the cost of bail bonds required because of an OCCURRENCE, including related traffic law violations. WE do not have to furnish or secure these bonds;

(c) expenses YOU incur for first aid to anyone injured in an OCCURRENCE covered by this Coverage Part;

(d) up to $50 a day for loss of earnings (but not other income) because of attendance at hearings or trials at OUR request;

(e) other reasonable expenses incurred at OUR request.

Under Insuring Agreement C – In addition to payments in the MOST WE WILL PAY provision, WE will also pay:

(a) up to $20 a day, but not for more than $600, for incurred loss of use of an OWNED AUTO;

(b) all ordinary and necessary expenses to return a stolen OWNED AUTO to YOU.

HOW WE WILL PAY – At OUR option:

Under Insuring Agreement B, WE may pay the injured person or the person or organization rendering the service. Such payment does not mean WE admit any liability on any INSURED's part;

Under Insuring Agreement C, WE will pay for, repair, or replace the damaged or stolen OWNED AUTO.

INSURED'S DUTIES AFTER INJURY, OCCURRENCE, OR LOSS – If there is an OCCURRENCE, and INSURED is sued or a claim is made against them, or YOU sustain a LOSS:

(a) Report this to US as soon as possible. Give US all the details YOU can, including where and how it happened, the names and addresses of persons involved, injured, and any witnesses;

(b) Under Insuring Agreement A, promptly send US all documents if an INSURED is sued or a claim is made against them;

(c) Under Insuring Agreement B, any injured person must submit a written proof of claim (under oath and signed if WE require) and execute any documents to have medical reports and records released to US;

(d) Under Insuring Agreement C:

(1) protect the OWNED AUTO, whether or not this insurance applies. Any further LOSS due to YOUR failure to do so will not be covered by this policy. WE will pay all reasonable expenses YOU incur for such protection;

(2) if the OWNED AUTO is stolen, notify the police;

(3) permit US to inspect the damaged OWNED AUTO prior to its repair or replacement, and submit a sworn proof of LOSS within 60 days;

(e) Cooperate and assist US in the investigation, settlement, defense, enforcement of contribution or indemnification. The INSURED may not, except at their expense, make any offer or payment, assume any obligation or incur any expense unless otherwise permitted in this Coverage Part.

DAMAGED OWNED AUTO – When an OWNED AUTO is damaged, whether or not such damage is covered by this Coverage Part, OUR liability is reduced by the amount of such damage until repairs have been completed.

NO BENEFIT TO BAILEE – This insurance will not benefit, directly or indirectly, any carrier or bailee.

OUT OF STATE EXTENSION – While an OWNED AUTO or TEMPORARY SUBSTITUTE AUTO insured by this Coverage Part is away from the state where it is licensed and registered, WE will:

1. increase this Coverage Part limits to meet those specified by any compulsory or financial responsibility law in the jurisdiction where the AUTO is being used;

2. provide the minimum amounts and types of other coverages, such as "No Fault", required of out-of-state AUTOS by the jurisdiction where the AUTO is being used.

WE will not pay anyone more than once for the same elements of INJURY because of these extensions.

OTHER INSURANCE – The insurance afforded by this Coverage Part is primary, except it is excess:

(1) under Insuring Agreement A and C, while the OWNED AUTO or TEMPORARY SUBSTITUTE AUTO is in the care, custody, or control of any person or organization other than YOU, or YOUR spouse if a resident of the same household;

(2) under Insuring Agreement B, over any collectible AUTO insurance provided on a TEMPORARY SUBSTITUTE AUTO.

If there is other AUTO medical payments insurance on an OWNED AUTO, WE will pay only the proportion that OUR limit under Insuring Agreement B bears to the total of all applicable limits.

POLICY TERRITORY – This Coverage Part covers:

(a) anywhere in the United States of America, its territories, or possessions, or Canada;

(b) under Insuring Agreements A and B, in international waters or air space, if the LOSS or INJURY does not occur in the cause of travel or

transportation between countries, states, or nations;

(c) under Insuring Agreement C, while being transported between ports of (a) above.

SUBROGATION – The SUBROGATION condition in the GENERAL CONDITIONS does not apply to Insuring Agreement B.

UNICOVER COVERAGE PART 950
GENERAL LIABILITY INSURANCE

INSURING AGREEMENT – WE will pay all sums the INSURED legally must pay as damages (including punitive damages where insurable by law) because of INJURY to which this Coverage Part applies, caused by an OCCURRENCE arising out of the hazard shown in the declarations:

PREMISES – the ownership, maintenance or use of the premises scheduled in the declarations (or acquired by YOU during the Coverage Part period) and all operations necessary or incidental thereto, except the PRODUCT HAZARD or COMPLETED OPERATIONS HAZARD.

WATERCRAFT – the ownership, maintenance, or use of the watercraft scheduled in the declarations.

CONTRACTORS – construction operations for YOU by any contractor at the premises scheduled in the declarations (or at premises acquired by YOU during the Coverage Part period) including YOUR acts or omissions in the general supervision of those operations.

WE have the right and duty to defend any suit asking for these damages. WE may investigate and settle any claim

or suit WE consider appropriate. OUR payment of the limit shown in the declarations ends OUR duty to defend.

WE have no right or duty to defend suits for damages not covered by this Coverage Part.

DEFINITIONS – When used in this Coverage Part:

"AUTO" means any land motor vehicle, trailer or semi-trailer, designed for travel on public roads and includes its permanently attached equipment. "AUTO" does not include MOBILE EQUIPMENT.

"COLLAPSE HAZARD" means the collapse of or structural INJURY to a building or structure caused by:

(a) grading of land, excavating, borrowing, filling, back-filling, tunnelling, pile driving, coffer-dam or caisson work, or

(b) moving, shoring, underpinning, raising or demolition of any building or structure or the removal or rebuilding of any of its structural support.

It also means INJURY to any other property at any time resulting from any of these.

The COLLAPSE HAZARD does not include INJURY (1) arising out of operations performed for YOU by independent contractors, or (2) included in COMPLETED OPERATIONS HAZARD or UNDERGROUND HAZARD, or (3) for which liability is assumed by an INSURED for any of them.

"COMPLETED OPERATIONS HAZARD" means INJURY arising out of YOUR operations or a reliance upon a warranty made with respect to them, but only if the

INJURY occurs after the operations have been completed or abandoned and occurs away from premises owned by or rented to YOU. "Operations" includes materials, parts, or equipment furnished with them and are deemed completed at the earliest of the following:

(a) when YOU have completely fulfilled a contract specifying the "Operations";

(b) when all "Operations" to be performed by YOU at a specific site have been completed; or

(c) when the portion of the work out of which the INJURY arises has been utilized by any one other than a contractor or subcontractor engaged in performing for a principal as part of the same project.

Operations requiring service, maintenance, or corrective work, repair, or replacement because of a defect, but which are otherwise completed are deemed completed. INJURY will not be deemed as arising out of the COMPLETED OPERATIONS HAZARD when caused by (a) the transportation of property, unless caused by the loading or unloading of a vehicle, or (b) the existence of tools, uninstalled equipment or abandoned or unused materials.

"EXPLOSION HAZARD" means INJURY to tangible property arising out of blasting or explosion. It does not mean such INJURY (1) arising out of the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment, or (2) arising out of operations performed for YOU by independent

contractors, or (3) included in the COMPLETED OPERATIONS HAZARD or the UNDERGROUND INJURY HAZARD, or (4) for which liability is assumed by an INSURED for any of these.

"INJURY" means bodily injury, sickness, disease, or disability (including death resulting from any of these) or damage to or loss of use of tangible property.

"MOBILE EQUIPMENT" means vehicles designed for use principally off public roads, those not required to be licensed, and AUTOS used solely on YOUR premises. It includes, but is not limited to, bulldozers, power shovels, rollers, graders, scrapers, and any other road construction repair equipment, farm machinery, cranes, forklifts, pumps, generators, air compressors, drills, street sweepers, riggers, or vehicles used to provide mobility for any of these when permanently attached to the equipment.

"OCCURRENCE" means an accident, including continuous or repeated exposure to conditions, which results in INJURY during the Coverage Part period neither intended nor expected by the INSURED. All INJURY arising out of a continuous or repeated exposure to substantially the same general conditions will be considered as arising out of one OCCURRENCE.

"PRODUCTS HAZARD" means INJURY arising out of YOUR PRODUCTS or a reliance upon a warranty made with respect to them, but only if INJURY occurs away from premises owned by or rented to YOU and after physical possession of the PRODUCT has been relinquished to someone else.

"PRODUCTS" means the goods or products YOU made or sold, or those made or sold by others trading under YOUR name. It includes any container for the goods or products (other than a vehicle) but does not include a vending machine or any property (other than a container) rented or located for use of others but not sold.

"UNDERGOUND INJURY HAZARD" means INJURY to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus in connection with it, beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, borrowing, filling, back-filling or pile driving. It also means INJURY to any other property at any time resulting from any of these.

The UNDERGROUND INJURY HAZARD does not include INJURY to tangible property (1) arising out of operations performed for YOU by independent contractors, or (2) included in the COMPLETED OPERATIONS HAZARD, or (3) for which liability is assumed by any INSURED for any of these.

EXCLUSIONS – This insurance does not apply to:

(a) INJURY caused by any dishonest, fraudulent, intentional, or criminal act committed by any INSURED;

(b) liability assumed by any INSURED under any contract or agreement, except a written lease of premises, elevator maintenance agreement, or an easement or sidetrack agreement except in connection with construction or demolition operations on or adjacent to a railroad;

(c) INJURY arising out of the ownership, maintenance, use, loading or unloading of any:

(1) aircraft;

(2) AUTO, except YOUR parking of an AUTO not owned, rented, leased, or loaned to any INSURED on premises scheduled in the declarations, or premises YOU acquire during the Coverage Part period;

(3) MOBILE EQUIPMENT while being operated in, or in practice or preparation for any prearranged or organized race, rally, speed, demolition, or competitive contest or stunting activity; or to any snowmobile or trailer designed for use with it;

(4) Watercraft (i) not described in the declarations, (ii) while rented to others by YOU, (iii) carrying any passenger for a consideration, (iv) while afloat over six nautical miles from the coastal shoreline of the 48 contiguous United States, the District of Columbia, or Canada;

Part (4) of this exclusion does not apply to any watercraft while ashore on any premises insured under the PREMISES hazard.

(d) INJURY arising out of the transportation of MOBILE EQUIPMENT by an AUTO owned, operated, rented, leased, or borrowed by YOU;

(e) INJURY caused by the dumping, discharge, or escape of irritants, pollutants, or contaminants. This exclusion does not apply if the discharge is sudden and accidental;

(f) INJURY caused by the discharge, release, or escape of any petroleum substance into or upon any body of

water or water course, regardless of the nature of the discharge, release or escape (whether accidental or not);

(g) INJURY due to radioactive contamination, or the explosion of a nuclear weapon or device or their consequences;

(h) INJURY arising out of YOUR business of serving, manufacturing, distributing or selling alcoholic beverages;

(i) any obligation for which an INSURED may be held liable under any Worker's Compensation or disability benefits law or under any similar law;

(j) any obligation of the INSURED to indemnify another for INJURY to the INSURED's employee. This exclusion does not apply to contracts excepted in Exclusion (b) of this Coverage Part;

(k) INJURY to property owned by, rented or leased to, used by, or in the care, custody or control of the INSURED. This exclusion does not apply to a written sidetrack agreement with respect to property used by or in the care, custody, or control of the INSURED;

(l) INJURY to premises after YOU transfer ownership or possession to another, if INJURY is caused prior to the transfer;

(m) loss of use of property not physically damaged, if caused by YOUR delay or failure in performing any agreement or contract;

(n) INJURY to property caused by the COLLAPSE HAZARD, EXPLOSION HAZARD, or UNDERGROUND INJURY HAZARD;

(o) INJURY, if coverage is afforded in any other Coverage Part of this policy.

WHO IS AN INSURED – with respect to this Coverage Part:

1. YOU;

2. YOUR spouse, if YOU are a sole proprietor;

3. Any of YOUR partners, paid employees, executive officers, directors, or stockholders while acting within the scope of their duties as such;

4. If YOU are a partnership or a joint venture, any partner or member thereof, but only with respect to their liability as such;

5. With respect to watercraft, any person or organization legally responsible for the use of the described watercraft within the scope of YOUR permission.

WHO IS NOT AN INSURED – Any partnership or joint venture, other than YOU, in which an INSURED is a partner or member.

THE MOST WE WILL PAY – Regardless of the number of INSUREDS insured by this Coverage Part, persons or organizations who sustain INJURY, claims made or suits brought, the most WE will pay is the limit shown in the declarations for any one OCCURRENCE.

WE WILL ALSO PAY – WE will pay, in addition to the limit:

(a) all costs and expenses in defending an INSURED, and interest on any judgment that does not exceed the limit;

(b) premiums on appeal bonds or bonds to release property used to secure YOUR legal obligations, in a suit WE defend, but only for bonds up to OUR limit. Also, up to $250 for the cost of bail bonds required because of an OCCURRENCE, including related traffic law violations. WE do not have to furnish or secure these bonds;

(c) expenses YOU incur for first aid to anyone injured in an OCCURRENCE covered by this Coverage Part;

(d) up to $50 a day for loss of earnings (but not other income) because of attendance at hearings or trials at OUR request;

(e) other reasonable expenses incurred at OUR request.

INSURED'S DUTIES AFTER INJURY, OCCURRENCE, CLAIM OR SUIT – If there is an OCCURRENCE, the INSURED is sued, or a claim is made against an INSURED:

1. Report this to US as soon as possible. Give US all the details YOU can, including where and how it happened, the names and addresses of persons involved, injured, and any witnesses.

2. Promptly send US all documents, if an INSURED is sued or a claim is made against them.

3. Cooperate and assist US in the investigation, settlement, defense, enforcement of contribution or indemnification. The INSURED may not, except at their own expense, make any offer or payment, assume any obligation or incur any expense unless otherwise permitted by this Coverage Part.

UNICOVER COVERAGE PART 970
PERSONAL UMBRELLA

INSURING AGREEMENT - WE will pay for LOSS in excess of:

(a) coverage provided in any UNDERLYING INSURANCE;

(b) coverage provided in any other insurance available to an INSURED;

(c) in the absence of (a) and (b), the retention shown in the declarations.

WE have the right and duty to defend any suit for LOSS not covered by other insurance. WE may investigate and settle any claim or suit WE consider appropriate.

WE also have the right to defend any suit for LOSS covered by other insurance. WE have no right or duty to defend suits for LOSS not covered by this Coverage Part.

DEFINITIONS - When used in this Coverage Part:

"AUTO" means a land motor vehicle, trailer or semi-trailer, including farm tractors and farm implements.

"INJURY" means (1) bodily injury, sickness, disease, or disability (including death resulting from any of these), (2) mental anguish, mental injury, shock, discrimination or humiliation, (3) false arrest, false imprisonment, wrongful detention, wrongful eviction, malicious prosecution, libel, slander, defamation, invasion of rights of privacy or possession of personal property, (4) damage to or loss of use of tangible property.

"LOSS" means all sums the INSURED legally must pay as damages because of INJURY to which this insurance applies caused by an OCCURRENCE.

"OCCURRENCE" means an accident, including continuous or repeated exposure to conditions, which results in INJURY during the Coverage Part period neither intended nor expected by the INSURED. All INJURY arising out of a continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one OCCURRENCE.

"UNDERLYING INSURANCE" means the coverage and limits of liability of the underlying policy(s) or insurance scheduled in the declarations for this Coverage Part.

EXCLUSIONS – This insurance does not apply to:

(a) any obligation for which an INSURED may be held liable under any Worker's Compensation or disability benefits law, or under any similar law;

(b) INJURY to (1) property owned by an INSURED, or (2) watercraft rented to, used by, or in the care, custody or control of an INSURED;

(c) liability (1) assumed by an INSURED under any contract for INJURY which is an extension of the liability imposed upon the INSURED by statutory or common law, or (2) INJURY to property to the extent an INSURED is under contract to provide insurance;

(d) INJURY caused by any dishonest, fraudulent, intentional, or criminal act committed by an INSURED;

(e) the ownership, maintenance, use, loading or unloading of any aircraft;

(f) the ownership, maintenance, use, loading or unloading of any AUTO or watercraft. This exclusion does not apply to the extent any insurance is afforded by the UNDERLYING INSURANCE. In no event will this insurance apply to any watercraft in excess of 35 feet in length;

(g) any AUTO while being used as a taxicab, bus, public livery vehicle, emergency ambulance, long haul public freight carrier, carrier of property for a charge, transportation of explosives, gasoline, liquified petroleum gas, or other volatile petroleum products;

(h) any AUTO while being operated in, or in preparation or practice for any prearranged or organized race, rally, speed, demolition, or competitive contest or stunting activity; or while leased or rented to others;

(i) except with respect to any AUTO or watercraft, to any INSURED'S business, professional, or occupational pursuits (including failure to perform) or business property other than farms;

(j) punitive damages awarded against the INSURED, unless insurable by law and covered by the UNDERLYING INSURANCE;

(k) due to radioactive contamination or the explosion of a nuclear weapon or device or their consequences.

WHO IS AN INSURED – With respect to this Coverage Part:

1. YOU, including YOUR spouse if a resident of the same household;

2. a relative or ward of YOURS who is a resident of YOUR household;

3. any other person under the age of 21 who is a resident of YOUR household and in the care of an INSURED in 1 or 2.

THE MOST WE WILL PAY – Regardless of the number of INSUREDS, persons or organizations who sustain INJURY, claims made or suits brought, the most WE will pay is the least of the following:

(a) when there is no coverage for a LOSS available to the INSURED in the UNDERLYING INSURANCE or any other insurance, WE will pay the difference between OUR limit and the retention which are both shown in the declarations;

(b) when coverage for a LOSS is available to the INSURED in the UNDERLYING INSURANCE only, WE will pay the difference between OUR limit and the limit of such UNDERLYING INSURANCE which are both shown in the declarations;

(c) when there is no coverage for a LOSS available to the INSURED in the UNDERLYING INSURANCE but there is coverage available under another insurance policy (which was not purchased as excess of this policy), WE will pay the difference between OUR limit as shown in the declarations and the limit of such other insurance.

(d) when there is coverage for a LOSS available in both the UNDERLYING INSURANCE and any other insurance (which was not purchased as excess of this policy) WE will pay the

difference between the UNDERLYING INSURANCE and OUR limit (both as shown in the declarations) but only after the UNDERLYING INSURANCE and such other insurance have been exhausted.

When an INSURED has coverage for a LOSS under this Coverage Part and any other Umbrella Coverage Part or policy issued by US, the most WE will pay is the percentage the limit under this Coverage Part bears to the total limits of all such Coverage Parts or policies, but not for more than that percentage of the highest limit of any such Coverage Part or policy.

WE WILL ALSO PAY – If there is no UNDERLYING INSURANCE or any other insurance available to an INSURED, and coverage is afforded by this COVERAGE PART (except for the INSURED'S retention) WE will pay, in addition to OUR limit:

(a) all costs and expenses in defending an INSURED, and interest on any judgment that does not exceed OUR limit;

(b) premiums on appeal bonds or bonds to release property used to secure YOUR legal obligations, in a suit WE defend, but only for bonds up to OUR limit. Also, up to $250 for the costs of bail bonds required because of an OCCURRENCE, including related traffic law violations. WE do not have to furnish or secure these bonds;

(c) all costs and expenses in defending YOU, and interest on any judgment that does not exceed OUR limit;

(d) up to $50 a day for loss of earnings (but not other income) because of attendance at hearings or trials at OUR request;

(e) other reasonable expenses incurred at OUR request.

If any country will not let US defend YOU, WE will pay any such expenses when WE agree, in advance, in writing.

HOW WE WILL PAY – WE have no obligation to pay for a LOSS until (1) the UNDERLYING INSURANCE carrier(s) have paid or agreed to pay their policy limits, (2) any other insurer whose policy is available to the INSURED has paid or agreed to pay its policy limits, and (3) the INSURED has paid or agreed to pay the retention or any difference between the limits stated in this UNDERLYING INSURANCE and the actual limits (if less) as stated in such policies.

INSURED'S DUTIES AFTER INJURY, OCCURRENCE, CLAIM OR SUIT – If there is an OCCURRENCE, the INSURED is sued, or a claim is made against an INSURED:

1. Report this to US as soon as possible. Give US all the details YOU can, including where and how it happened, the names and addresses of persons involved, injured, and any witnesses.

2. Promptly send US all documents if any INSURED is sued or a claim is made against them.

3. Cooperate and assist US in the investigation, settlement, defense, enforcement of contribution or indemnification. The INSURED may not, except at their own expense, make any offer or

payment, assume any obligation or incur any expenses unless otherwise permitted in this Coverage Part.

DEFENSE AND SETTLEMENT – If there is UNDERLYING INSURANCE or other insurance available to the INSURED, WE will not assume charge of defense or settlement of any claims made or suits brought against the INSURED. After the UNDERLYING INSURANCE or other insurance has been exhausted, by payment (or written agreement to pay) WE will assume charge of further defense or settlement.

WE do have the right to associate with the INSURED in defense and control of any claim or suit likely to include US.

APPEALS – If the INSURED, the UNDERLYING INSURANCE carrier, or any other insurance carrier that has insurance available to the INSURED, choose not to appeal a judgment in excess of their retention or limits, WE may do so. WE will pay all expenses, and be liable for the costs and interests for the appeal. In no event, however, will OUR liability exceed the limit stated in the declarations.

MAINTENANCE OF UNDERLYING INSURANCE – This insurance will apply as if the UNDERLYING INSURANCE is in effect, even if (1) YOU have reduced such insurance or failed to keep it in effect, (2) coverage has been denied or reduced due to the INSURED'S failure to comply with the policy conditions, or (3) the underlying insurer is bankrupt or insolvent.

POLICY TERRITORY – This Coverage Part applies anywhere in the world, except with respect to watercraft.Watercraft are covered, while afloat, only within six nautical miles of the coastal shoreline of the 48 contiguous United States, the District of Columbia, or Canada.

UNICOVER COVERAGE PART 980
UNBRELLA

INSURING AGREEMENT – We will pay for LOSS in excess of:

(a) coverage provided in any UNDERLYING INSURANCE;

(b) coverage provided in any other insurance available to an INSURED;

(c) in the absence of (a) or (b), the retention shown in the declarations.

WE have the right and duty to defend any suit for LOSS not covered by other insurance. WE may investigate and settle any claim or suit WE consider appropriate.

WE also have the right to defend any suit for LOSS covered by other insurance. WE have no right or duty to defend suits for LOSS not covered by this Coverage Part.

DEFINITIONS – When used in this Coverage Part:

"AUTO" means a land motor vehicle, trailer or semi-trailer, other land equipment capable of moving under its own power, equipment for use with it, and animal drawn equipment.

"AUTO HAZARD" means the ownership, maintenance, or use of any AUTO YOU own or is in YOUR care, custody, or control and:

(1) used for the purpose of GARAGE OPERATIONS, or

(2) Used principally in GARAGE OPERATIONS with occasional use for other business or non-business purposes, or

(3) furnished for the use of any person or organization.

"CUSTOMER'S AUTOS" means an AUTO not owned by YOU but in YOUR care, custody, or control for safekeeping, storage, service or repair.

"COMPLETED OPERATIONS HAZARD" means INJURY arising out of YOUR operations or a reliance upon a representation or warranty made with respect to them, but only if the INJURY occurs after the operations have been completed or abandoned and occurs away from premises owned by or rented to YOU. "Operations" includes materials, parts, or equipment furnished with them and are deemed completed at the earliest of the following:

(a) when YOU have completely fulfilled a contract specifying the "operation";

(b) when all "operations" to be performed by YOU at a specific site have been completed; or

(c) when the portion of the work out of which the INJURY arises has been utilized by any one other than a contractor or subcontractor engaged in performing for a principal as part of the same project.

Operations requiring service, maintenance, or corrective work, repair, or replacement because of a defect, but which are otherwise completed are deemed completed. INJURY will not be deemed as arising out of the COMPLETED OPERATIONS HAZARD when caused by (a) the transportation of property, unless caused by the loading or unloading of a vehicle, or (b) the existence of tools,

uninstalled equipment or abandoned or unused materials.

"EXPLOSION HAZARD" means INJURY to tangible property arising out of blasting or explosion. It does not mean such INJURY (1) arising out of the explosion of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment, or (2) arising out of operations performed for YOU by independent contractors, or (3) included in the COMPLETED OPERATIONS HAZARD or the UNDERGROUND INJURY HAZARD, or (4) for which liability is assumed by an INSURED for any of these.

"GARAGE OPERATIONS" means the ownership, maintenance, or use of that portion of any premises, where YOU conduct YOUR AUTO business, and all other operations necessary or incidental thereto.

"HAULAWAY" means a conveyance designed solely for use in transporting four wheeled motor vehicles.

"INJURY" means (1) bodily injury, sickness, disease, or disability (including death resulting from any of these) or damage to or loss of use of tangible property, (2) mental anguish, mental injury, shock, discrimination or humiliation, (3) false arrest, false imprisonment, wrongful eviction, wrongful detention, malicious prosecution, libel, slander, defamation of character, invasion of rights of privacy or possession of personal property, (4) plagiarism, piracy, copyright violation, or false advertising in the course of or related to YOUR advertising, broadcasting, or telecasting advertising, (5) infringement of a right to a title or slogan, unfair competition or idea misappropriation under an implied contract when committed or

alleged to have been committed in any advertising, publicity article, broadcast or telecast during the Coverage Part period and arising out of YOUR advertising activities.

INJURY will also mean, if insurance is afforded in the UNDERLYING INSURANCE for the perils, (6) any negligent act, error or omission in the administration of YOUR profit sharing, pension, or employee stock subscription plans or YOUR group life, group accident and health, Workers' Compensation, unemployment, social security, or disability benefits insurance. "Administration" means interpreting for or giving counsel to employees, handling records, effecting enrollment, termination or cancellation of employees, all under YOUR employee benefits programs when such acts are authorized by YOU.

"LOSS" means all sums the INSURED legally must pay as damages because of INJURY to which this insurance applies caused by an OCCURRENCE.

"LEGAL DAMAGES" means any suit brought against YOU during the Coverage Part period by or on behalf of a customer arising out of GARAGE OPERATIONS because of an alleged violation of any federal, state, or local odometer, truth-in-lending, truth-in-leasing, or AUTO damage disclosure statute or law, other than as a result of an OCCURRENCE or as defined in PRODUCT RELATED DAMAGES.

"OCCURRENCE" means an accident, including continuous or repeated exposure to conditions, which results in INJURY during the Coverage Part period neither intended nor expected by the INSURED. ALL INJURY

arising out of continuous or repeated exposure to substantially the same general conditions will be considered as arising out of one occurrence.

"PRODUCTS" means the goods or products YOU make, sell, service, or repair. It includes any container for the goods or products (other than a vehicle) but does not include a vending machine or any property (other than a container) rented or located for use of others but not sold.

"PRODUCTS HAZARD" means INJURY arising out of YOUR PRODUCTS or a reliance upon a representation or warranty made with respect to them, but only if INJURY occurs away from premises owned by or rented to YOU and after physical possession of the PRODUCT has been relinquished to someone else.

"PRODUCT RELATED DAMAGES" means any suit brought against YOU during the Coverage Part period by or on behalf of a customer arising out of the sale, service, or repairs of YOUR PRODUCT, other than as a direct result of an OCCURRENCE or as defined in LEGAL DAMAGES.

"UNDERGROUND INJURY HAZARD" means INJURY to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus in connection with it, beneath the surface of the ground or water, caused by and occurring during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, borrowing, filling, back-filling or pile driving. It also means INJURY to any other property at any time resulting from any of these.

The UNDERGROUND INJURY HAZARD does not include INJURY to tangible property (1) arising out of operations performed for YOU by independent contractors, or (2) included in the COMPLETED OPERATIONS HAZARD, or (3) for which liability is assumed by any INSURED for any of these.

"UNDERLYING INSURANCE" means the coverage and limits of liability of the underlying policy(s) or insurance scheduled in the declarations for this Coverage Part. UNDERLYING INSURANCE does not include any insurance afforded by the Special Limits Application portion of Coverage Part 330.

"WORK" means work YOU perform or work someone else performed for YOU

EXCLUSIONS – This insurance does not apply to:

(a) INJURY caused by any dishonest, fraudulent, intentional, or criminal act committed by any INSURED;

(b) any obligation for which an INSURED may be held legally liable under any Worker's Compensation or disability benefits law or similar law;

(c) any obligation of the INSURED to indemnify another for INJURY to the INSURED'S employee;

(d) INJURY claimed because of the recall of YOUR PRODUCTS or YOUR WORK, or other property of which they form a part, due to a known or suspected defect or deficiency they contain;

(e) loss of use of property not physically damaged, if caused by:

(1) YOUR delay or failure in performing any agreement or contract;

(2) the failure of YOUR PRODUCT or YOUR WORK to meet the quality warranted or the level of performance represented:

(f) INJURY to property owned by YOU;

(g) INJURY caused by the dumping, discharge, or escape of irritants, pollutants, or contaminants. This exclusion does not apply if the discharge is sudden and accidental;

(h) INJURY caused by the discharge, release, or escape of any petroleum substance into or upon any body of water or water course, regardless of the nature of the discharge, release, or escape (whether accidental or not);

(i) contractual liability assumed by any INSURED for INJURY to property which is rented, occupied, used, or controlled by an INSURED, if the contractual liability is greater than that imposed by statutory or common law;

(j) INJURY caused by:

(1) the unavailability of or an incorrect description of a PRODUCT advertised;

(2) A mistake in the advertised price;

(3) an alleged breach of contract or failure to pay for advertising activities;

(4) advertising activities resulting in infringement or misappropriation of a trademark, service mark, or trade name;

(k) INJURY arising out of an INSUREDS activities as an insurance agent, broker, or consultant;

(l) punitive damages awarded against an INSURED, unless insurable by law and covered by the UNDERLYING INSURANCE;

(m) any claim made or suit brought as a result of any extended warranty or mechanical breakdown agreement. This exclusion does not apply to bodily injury, sickness, disease, or disability (including death resulting from any of these) or damage to tangible property.

(n) INJURY to property in YOUR care, custody or control. This exclusion does not apply to CUSTOMER'S AUTOS or real property if insurance is provided in the UNDERLYING INSURANCE;

(o) INJURY arising out of the ownership, maintenance, use loading or unloading of any:

(1) watercraft:

(i) over 35 feet in length;

(ii) when used for non-business purposes;

(iii) when rented or leased to others;

(iv) while afloat over six nautical miles from the coastal shoreline of the 48 contiguous United States, the District of Columbia, or Canada;

(2) AUTO while:

(i) being used as a HAULAWAY;

(ii) operated in, or in practice or preparation for any prearranged or organized race, rally, speed, demolition, or competitive contest or stunting activity;

(iii) leased or rented to others, except:

(aa) YOUR salesman for use principally in GARAGE OPERATIONS and the AUTO HAZARD;

(bb) YOUR customers, for a term of two months or less when it temporarily replaces the CUSTOMER'S AUTO or when the customer is awaiting delivery of an AUTO purchased from YOU;

(iv) being used as a taxicab, bus, public livery, emergency ambulance, public freight carrier, or carrying property for a charge;

(v) being used to transport explosives, gasoline, liquified petroleum gas, or other volatile petroleum products.

Exclusion (iv) and (v) do not apply when the excluded class or operation constitutes a minor and incidental part of YOUR business operations.

This exclusion does not apply if the INSURED has coverage in the UNDERLYING INSURANCE.

(p) aircraft;

(q) INJURY, as defined in part (6) of the definition of INJURY, if caused by:

(1) failure of performance by any insurer;

(2) an INSURED'S failure to comply with any Workers' Compensation, unemployment insurance, Social Security, or disability benefits law or similar laws;

(3) failure of investments or assets to perform as represented by an INSURED;

(4) advice given by an INSURED to an employee to participate or not to participate in stock subscription plans;

(5) failure of any Employee Benefits program, for any reason;

(6) the investment or non-investment of funds;

(7) violation of any responsibilities, obligations, or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, its amendments, or by any common or statutory law of the United States or any state or jurisdiction therein;

(r) INJURY arising out of PRODUCTS HAZARD or COMPLETED OPERATIONS HAZARD. This exclusion does not apply to the extent such coverage is afforded in the UNDERLYING INSURANCE;

(s) LEGAL DAMAGES or PRODUCT RELATED DAMAGES;

(t) due to radioactive contamination or the explosion of a nuclear weapon or devise or their consequences;

(u) LOSS with respect to construction operations for an INSURED by any contractor arising out of:

(1) the COLLAPSE HAZARD, EXPLOSION HAZARD, or UNDERGROUND INJURY HAZARD;

(2) any job excluded in the UNDERLYING INSURANCE (other than with respect to the ownership, maintenance, use, loading or unloading of an AUTO);

(3) or in any way connected with the application of the principals of eminent domain, or

condemnation proceedings (retroactive, inverse, or reverse, or by whatever name called).

Part (1) of this exclusion does not apply to the extent coverage is available to the INSURED in the UNDERLYING INSURANCE.

WHO IS AN INSURED – Except with respect to the ownership, maintenance, use, loading, or unloading of any AUTO or watercraft:

(a) YOU; if YOU are a sole proprietorship, coverage applies only to YOUR business activities as covered by the UNDERLYING INSURANCE;

(b) any of YOUR partners, paid employees, directors, executive officers, or stockholders, while acting within the scope of their duties as such;

(c) if YOU are a partnership or joint venture, any partner or member thereof, but only with respect to their liability as such;

(d) any other person or organization named in the UNDERLYING INSURANCE, but not for broader coverage than available to them in the UNDERLYING INSURANCE;

With respect to any AUTO or watercraft:

(a) YOU;

With respect to (1) any AUTO or watercraft used in YOUR business or (2) personal use of any AUTO or watercraft owned or hired by YOU:

(a) any person or organization designated in the declarations.

THE MOST WE WILL PAY – Regardless of the number of INSUREDS, AUTOS, or watercraft insured by this Coverage Part, persons or organizations who sustain INJURY, claims made or suits brought, the most WE will pay is the least of the following;

(a) when there is no coverage for a LOSS available to the INSURED in the UNDERLYING INSURANCE or any other insurance, WE will pay the difference between OUR limit and the retention which are both shown in the declarations;

(b) when coverage for a LOSS is available to the INSURED in the UNDERLYING INSURANCE only, WE will pay the difference between OUR limit and the limits of such UNDERLYING INSURANCE which are both shown in the declarations;

(c) when there is no coverage for a LOSS available to the INSURED in the UNDERLYING INSURANCE but there is coverage available under another insurance policy (which was not purchased as excess of this policy), WE will pay the difference between OUR limit as shown in the declarations and the limits of such other insurance;

(d) when there is coverage for a LOSS available in both the UNDERLYING INSURANCE and other insurance (which was not purchased as excess of this policy) WE will pay the difference between the UNDERLYING INSURANCE and OUR limit (both as shown in the declarations) but only after the UNDERLYING INSURANCE and such other insurance have been exhausted.

When an INSURED has coverage for a LOSS under this Coverage Part and any other Coverage Part or policy issued by US, the most WE will pay is the percentage the limit under this Coverage Part bears to the total limits of all such Coverage Parts or policies, but not for more than that percentage of the highest limit of any such Coverage Part or policy.

WE WILL ALSO PAY – If there is no UNDERLYING INSURANCE or any other insurance available to an INSURED, and coverage is afforded by this Coverage Part (except for the INSURED'S retention) WE will pay, in addition to OUR limit:

(a) all costs and expenses in defending an INSURED, and interest on any judgment that does not exceed OUR limit;

(b) premiums on appeal bonds or bonds to release property used to secure YOUR legal obligations. Also up to $250 for the cost of bail bonds required because of an OCCURRENCE, including related traffic law violations. WE do not have to furnish or secure these bonds;

(c) all reasonable expenses the INSURED incurs at OUR request.

If any country will not let US defend YOU, WE will pay any such expenses when WE agree, in advance, in writing.

HOW WE WILL PAY – WE have no obligation to pay for a LOSS until (1) the UNDERLYING INSURANCE carrier(s) have paid or agreed to pay their policy limits, (2) any other insurer whose policy is available to the INSURED has paid or agreed to pay its policy limits, and (3) the

INSURED has paid or agreed to pay the retention or any difference between the limits stated in the UNDERLYING INSURANCE and the actual limits (if less) as stated in such policies.

INSURED'S DUTIES AFTER INJURY, OCCURRENCE, CLAIM OR SUIT – If there is an OCCURRENCE, the INSURED is sued, or a claim is made against an INSURED:

1. Report this to US as soon as possible. Give US all the details YOU can, including where and how it happened, the names and addresses of persons involved, injured, and any witnesses.

2. Promptly send US all documents if any INSURED is sued or a claim is made against them.

3. Cooperate and assist US in the investigation, settlement, defense, enforcement of contribution or indemnification. The INSURED may not, except at their own expense, make any offer or payment, assume any obligation or incur any expense unless otherwise permitted in this Coverage Part.

DEFENSE AND SETTLEMENT – If there is UNDERLYING INSURANCE or other insurance available to the INSURED, WE will not assume charge of defense or settlement of any claims made or suits brought against the INSURED. After the UNDERLYING INSURANCE or other insurance has been exhausted by payment (or written agreement to pay) WE will assume charge of further defense or settlement.

WE do have the right to associate with the INSURED in defense and control of any claim or suit likely to involve US.

APPEALS – If the INSURED, the UNDERLYING INSURANCE carrier, or any other insurance carrier that has insurance available to the INSURED, choose not to appeal a judgment in excess of their limits, WE may do so. WE will pay all expenses, and be liable for the costs and interest for the appeal. In no event, however, will OUR liability exceed OUR limit as stated in the declarations.

MAINTENANCE OF UNDERLYING INSURANCE – This insurance will apply as if the UNDERLYING INSURANCE is in effect, even if (1) YOU have reduced such insurance or failed to keep it in effect, (2) coverage has been denied or reduced due to the INSURED'S failure to comply with the policy conditions, or (3) the underlying insurer is bankrupt or insolvent.

Omitted are 31 pages of optional policy endorsements approved for use with the Unicover III policy.

DEFENDANT'S EXHIBIT P

(logo)

UNIVERSAL UNDERWRITERS INSURANCE COMPANY
FIFTY-ONE FIFTEEN OAK,
KANSAS CITY, MISSOURI 64112

October 10, 1983

Mr. Paul Candage, Insurance Analyst
Vermont Banking & Insurance Department
120 State St.
Montpelier, Vermont 05602

Re: Your Disapproval F.100A 3/83 Dated 9-23-83 – Resubmission:
UNICOVER III Program Revision – Forms
A. Vermont State Amendatory Part, Pages 2-A & 2-B, Ed. 9-83, for the Auto Truck and M/c Dealer Program (Replaces 10-82 Ed.)
B. Vermont State Amendatory Part, Pages 2-P(1) to 2-P(~~3~~ [2]), Ed. 9-83, for the Automotive Parts Dealer Program

Dear Mr. Candage:

I am again attaching the captioned forms for your review and approval for our use. I have also added a F.103,9-81 for both forms and have also provided the side-by-side comparison which you have required.

Hopefully with this added material you will be able to approve our filing.

Yours very truly,

/s/ Ralph W. Lind
Ralph W. Lind
Assistant Secretary

RWL/ljc

STATE OF VERMONT
DEPT. OF INSURANCE
RECEIVED

OCT 14 1983

APPROVED 10/26/83

DECLINED _____

BY: Paul Candage

Printing master sent to Print Shop 10-31-83

Old Editions

If this policy has been in effect for 60 days or more, or if this policy is a renewal of a policy WE issued, WE may cancel this policy only for one or more of the following reasons:

(1) nonpayment of premium, or

(2) fraud or material misrepresentation affecting this policy or in the presentation of claims thereunder or violation of any provisions of this policy, or

(3) substantial increase in hazard.

Page 2-P(1), Ed. 11-81

If this policy has been in effect for 60 days or more, or if this policy is a renewal of a policy WE issued, WE may cancel this policy only for one or more of the following reasons:

(1) nonpayment of premium, or

(2) fraud or material misrepresentation affecting this policy or in the presentation of claims

thereunder or violation of any provisions of this policy, or

(3) substantial increase in hazard, provided [that cancellation for this reason shall be effective only after approval of the Commissioner.]

Page 2-A, Ed. 10-82

New Editions

When this policy is in effect 60 days or more or is a renewal policy, WE may cancel for one or more of the following reasons:

Nonpayment of premium. If WE cancel for this reason, WE will give YOU at least 10 days notice.

Fraud or material misrepresentation affecting this policy or in the presentation of claims thereunder or violation of any provisions of this policy.

Substantial increase in hazard, *provided WE have secured approval for the cancellation for this reason from the commissioner of insurance.*

Page 2-P(1) Ed. 9-83

When this policy is in effect 60 days or more or is a renewal policy, WE may cancel for one or more of the following reasons:

Nonpayment of premium. If WE cancel for this reason, WE will give YOU at least 10 days notice.

Fraud or material misrepresentation affecting this policy or in the presentation of claims thereunder or violation of any provisions of this policy.

Substantial increase in hazard, *provided WE have secured approval for the cancellation for this reason from the commissioner of insurance.*

Page 2-A, Ed. 9-83

VERMONT DEPARTMENT OF INSURANCE

Form Submission – Summary Sheet

Required Filing Information

Date of Filing: October 11, 1983

Insurance Company or Rating Organization: Universal Underwriters Insurance Company

Form No./Ed. Date: Pages 2-A & 2-B ___ New ___ Revision ___ Edition No. 9-83

Attches to: UNICOVER Policy (Auto, Truck & Motorcycle Dealer Program)

(Type of policy or coverage part)

Presently filed rates and rules are to be used with this form filing?

x Yes ___ No (Explain) _____

_____

Please describe/respond: Display VT exceptions to basic UNICOVER Policy

---

Purpose and Use of Form? _____

Is it Mandatory or Optional? (Explain) Mandatory – part of policy.

Broadens Coverage? (Explain) N/A

Restricts Coverage? (Explain) N/A

Revision of: Cancellation Provision – revised to require Ins. Comm's
(if form is different from the immediate previous edition, explain the difference in detail – attach additional sheets as needed)

permission to cancel for "increase in hazard".

Company – Please complete the required number of copies of this form. Two completed copies must accompany every policy, form or endorsement filing made with the Vermont Insurance Department.

FOR DEPARTMENTAL USE ONLY – DO NOT COMPLETE

Date Filed: _____ Date Received: _____

Dept. File No. _____ Date Approved: _____

Effective Date: _____

F 103 9/81

VERMONT

STATE AMENDATORY PART

The GENERAL CONDITIONS are changed as follows:

The third paragraph of the CANCELLATION Condition is replaced by the following:

When this policy is in effect less than 60 days and is not a renewal, WE may cancel for any reason provided WE mail YOU notice within this period. If WE cancel for non-payment of premium WE will give YOU at least 10 days notice. If WE cancel for any other reason WE will mail YOU at least 30 days notice.

When this policy is in effect 60 days or more or is a renewal policy, WE may cancel for one or more of the following reasons:

Nonpayment of premium. If WE cancel for this reason, WE will give YOU at least 10 days notice.

Fraud or material misrepresentation affecting this policy or in the presentation of claims thereunder or violation of any provisions of this policy.

Substantial increase in hazard, provided WE have secured approval for the cancellation for this reason from the commissioner of insurance.

YOU may be entitled to a refund as a result of the cancellation. If so, it will be sent to you. However, making or offering to make the refund is not a condition of cancellation.

Notice of Cancellation to YOU will be by certified mail except that in the case of cancellation for nonpayment of premium, notice shall be by certified mail or certificate of mailing. The mailing of notice shall be sufficient proof of notice.

The following CONDITIONS are added:

NONRENEWAL – If WE decide not to renew this policy, WE will mail or deliver to YOU at YOUR address shown in the declarations, written notice of OUR intention not to renew at least 30 days prior to the expiration date of this policy.

OPTIONAL ENDORSEMENT No. 051 is not available in Vermont.

The following applies to all Coverage Parts affording AUTO LIABILITY or GENERAL LIABILITY insurance:

VERMONT STATUTORY LIABILITY ENDORSEMENT

This policy is issued and delivered subject to the Laws of Vermont and particularly to Chapter 113, Title 8 of the Vermont Statutes, including the following statutory requirements forming a part of such Chapter:

WE will pay and satisfy any judgment that may be recovered against the INSURED upon any claim covered by this policy to the extent and within the limits of liability assumed thereby, and shall protect the INSURED against the levy of any execution issued upon any such judicial judgment or claim against the INSURED. No limitation of liability in this policy shall be valid if, after a judgment has been rendered against the INSURED in respect to his legal liability for

damages in a particular instance, WE continue the litigation by an appeal or otherwise, unless the INSURED shall stipulate with US, agreeing to continue such litigation;

No action shall lie against US to recover for any LOSS under this policy, unless brought within one year after the amount of such LOSS is made certain either by judgment against the INSURED after final determination of the litigation or by agreement between the parties with OUR written consent;

The insolvency or bankruptcy of the INSURED shall not release US from the payment of damages for INJURY sustained or LOSS occasioned during the life of the policy, and in case of such insolvency or bankruptcy an action may be maintained by the injured person or claimant against US under the terms of the policy, for the amount of any judgment obtained against the INSURED not exceeding the limits of the policy; and

Payment of any judicial judgment or claim by the INSURED for any of OUR liability hereunder shall not bar the INSURED from any action or right of action against US. In case of payment of LOSS or expense under this policy, WE shall be subrogated to all rights of the INSURED against any party, as respects such LOSS or expense, to the amount of such payment, and the INSURED shall execute all papers required and shall cooperate with US to secure to the company such rights.

The following exclusions, pertaining to pollution and contamination, are deleted with respect to any AUTO

insured by this policy and licensed or principally garaged in, or used for GARAGE OPERATIONS in Vermont:

Coverage Part 500 – GARAGE INSURANCE: (m) and (n)
Coverage Part 900 – BASIC AUTO INSURANCE: (g)
Coverage Part 980 – UMBRELLA: (g) and (h)

The following exclusions are changed to delete "or stunting activity:"

Coverage Part 500 – GARAGE INSURANCE: (h)(2)
Coverage Part 900 – BASIC AUTO INSURANCE: (h)(1)
Coverage Part 980 – UMBRELLA: (o)(2)(ii)

The following is added to Exclusion (c)(3) of Coverage Part 950 – GENERAL LIABILITY INSURANCE:

This exclusion does not apply to any snowmobile or trailer designed for use with it if the INJURY occurs on any premises owned by, rented to or controlled by YOU.

VERMONT DEPARTMENT OF INSURANCE

Form Submission – Summary Sheet

Required Filing Information

Date of Filing: October 11, 1983

Insurance Company or Rating Organization: Universal Underwriters Insurance Company

Form No./Ed. Date: Pages 2-P(1)-(2) ___ New _x_ Revision _x_ Edition No. (9-83)

Attaches to: UNICOVER Policy (Automotive Parts Dealers Program)
(Type of policy or coverage part)

Presently filed rates and rules are to be used with this form filing?

_x_ Yes ___ No (Explain) _____

_____

Please describe/respond: _____

_____

Purpose and Use of Form? Display VT exceptions to basic UNICOVER Policy

Is it Mandatory or Optional? (Explain) Mandatory – part of policy.

Broadens Coverage? (Explain) N/A

Restricts Coverage? (Explain) N/A

Revision of: Cancellation Provision – revised to require Ins. Comm's
(if form is different from the immediate previous edition, explain the difference in detail – attach additional sheets as needed)

permission to cancel for "increase in hazard".

_____

Company – Please complete the required number of copies of this form. Two completed copies must accompany every policy, form or

endorsement filing made with the Vermont Insurance Department.

FOR DEPARTMENTAL USE ONLY - DO NOT COMPLETE

Date Filed: _____ Date Received: _____

Dept. File No. _____ Date Approved: _____

Effective Date: _____

F 103 9/81

UNIVERSAL UNDERWRITERS INSURANCE COMPANY

FIFTY-ONE FIFTEEN OAK •
KANSAS CITY, MISSOURI 64112

(logo)

VERMONT

STATE AMENDATORY PART

The GENERAL CONDITIONS are changed as follows:

The third paragraph of the CANCELLATION Condition is replaced by the following:

When this policy is in effect less than 60 days and is not a renewal, WE may cancel for any reason provided WE mail YOU notice within this period. If WE cancel for non-payment of premium WE will give YOU at least 10 days notice. If WE cancel for any other reason WE will mail YOU at least 30 days notice.

When this policy is in effect 60 days or more or is a renewal policy, WE may cancel for one or more of the following reasons:

Nonpayment of premium. If WE cancel for this reason, WE will give YOU at least 10 days notice.

Fraud or material misrepresentation affecting this policy or in the presentation of claims thereunder or violation of any provisions of this policy.

Substantial increase in hazard, provided WE have secured approval for the cancellation for this reason from the commissioner of insurance.

YOU may be entitled to a refund as a result of the cancellation. If so, it will be sent to you. However, making or offering to make the refund is not a condition of cancellation.

Notice of Cancellation to YOU will be by certified mail except that in the case of cancellation for nonpayment of premium, notice shall be by certified mail or certificate of mailing. The mailing of notice shall be sufficient proof of notice.

The following CONDITIONS are added:

NONRENEWAL – If WE decide not to renew this policy, WE will mail or deliver to YOU at YOUR address shown in the declarations, written notice of OUR intention not to renew at least 30 days prior to the expiration date of this policy.

The following applies to all Coverage Parts affording AUTO LIABILITY or GENERAL LIABILITY insurance:

VERMONT STATUTORY LIABILITY ENDORSEMENT

This policy is issued and delivered subject to the Laws of Vermont and particularly to Chapter 113, Title 8 of the Vermont Statutes, including the following statutory requirements forming a part of such Chapter:

WE will pay and satisfy any judgment that may be recovered against the INSURED upon any claim covered by this policy to the extent and within the limits of liability assumed thereby, and shall protect the INSURED against the levy of any execution issued upon any such judicial judgment or claim against the INSURED. No limitation of liability in this policy shall be valid if, after a judgment has been rendered against the INSURED in respect to his legal liability for damages in a particular instance, WE continue the litigation by an appeal or otherwise, unless the INSURED shall stipulate with US, agreeing to continue such litigation;

No action shall lie against US to recover for any LOSS under this policy, unless brought within one year after the amount of such LOSS is made certain either by judgment against the INSURED after final determination of the litigation or by agreement between the parties with OUR written consent;

The insolvency or bankruptcy of the INSURED shall not release US from the payment of damages for INJURY sustained or LOSS occasioned during the life of the policy, and in case of such insolvency or bankruptcy an action may be maintained by the injured person or claimant against US under the terms of the policy, for the amount of any judgment obtained against the

INSURED not exceeding the limits of the policy; and

Payment of any judicial judgment or claim by the INSURED for any of OUR liability hereunder shall not bar the INSURED from any action or right of action against US. In case of payment of LOSS or expense under this policy, WE shall be subrogated to all rights of the INSURED against any party, as respects such LOSS or expense, to the amount of such payment, and the INSURED shall execute all papers required and shall cooperate with US to secure to the company such rights.

The following exclusions, pertaining to pollution and contamination, are deleted with respect to any AUTO insured by this policy and licensed or principally garaged in, or used for GARAGE OPERATIONS in Vermont:

Coverage Part 830 – AUTO INSURANCE: (g)
Coverage Part 980 – UMBRELLA: (g) and (h)

The following exclusions are changed to delete "or stunting activity:"

Coverage Part 830 – AUTO INSURANCE: (h)(1)
Coverage Part 980 – UMBRELLA: (o)(2)(ii)

The following is added to Exclusion (c)(3) of Coverage Part 660 – GENERAL LIABILITY INSURANCE:

This exclusion does not apply to any snowmobile or trailer designed for use with it if the INJURY occurs on any premises owned by, rented to or controlled by YOU.

(seal)

STATE OF VERMONT
DEPARTMENT OF BANKING AND INSURANCE
MONTPELIER 05602
TEL. (802) 828-3301

DIVISION OF:
BANKING
INSURANCE
SECURITIES

DATE Sept. 23, 1983

TO: Universal Underwriters Ins. Co.
5115 Oak St.
Kansas City, Missouri

RE: Vermont Amendatory End.

We have received your filing dated _____

THIS FILING HAS BEEN DISAPPROVED FOR USE IN VERMONT BECAUSE:

___ 1. It does not comply with Title ___ Chapter ___ Section(s) _____

X 2. It does not comply with Regulation 81-3 Section(s) VI (K)

X 3. Per above Reg. there must be (1) the proper filing form and (2) a side-by-side comparison, with brackets and underlines showing exactly what wording has been changed.

A hearing will be granted within 20 days upon written request.

Should you desire further consideration on this filing, please submit the following:

___ 1. The earned premium and incurred losses for Vermont and countrywide separately for the past five years.

___ 2. The number of Vermont policyholders affected as well as the dollar impact of this filing.

___ 3. _____

_____

_____

_____

Sincerely,

By: Paul Candage

George A. Chaffee
Commissioner

(logo)

UNIVERSAL UNDERWRITERS INSURANCE COMPANY

FIFTY-ONE FIFTEEN OAK,
KANSAS CITY, MISSOURI 64112

(Received Sep. 19, 1983)

September 15, 1983

Chief of Insurance Rate Analysis
Vermont Banking & Insurance Department
120 State St.
Montpelier, Vermont 05602

Re: UNICOVER III Program Revision – Forms
A. VT State Amendatory Part, Page 2-A thru 2-B, Ed. 9/83, for the Auto, Truck & M/c Dealer Program (Replaces 10-82 Edition)

B. VT State Amendatory Part, Pages 2-P(1) thru 2-P(2), Ed. 9/83, for the Automotive Parts Dealers Program (Replaces 11-81 Edition)
Proposed Effective Date: October 15, 1983

Dear Sir:

The captioned forms are attached for your review and approval.

The changes are to comply with Section 3879 of the Vermont Statutes (Title 8, Chapter 105) and the changed ISO form CA 02 32 which now requires the prior permission of the commissioner of insurance when cancelling due to increase-in-hazard. We have been interpreting our policy to comply, but we now need to get this provision written into the policy.

We believe our policy is back in compliance with Vermont Law, Rules & Regulations.

Please return one copy of this filing with your approval thereon for our files.

Yours very truly,

/s/ Ralph W. Lind
Ralph W. Lind
Assistant Secretary

RWL/ljc

APPROVED _____

DECLINED 9/23/83

BY: Paul Candage

VERMONT

STATE AMENDATORY PART

The GENERAL CONDITIONS are changed as follows:

The third paragraph of the CANCELLATION Condition is replaced by the following:

When this policy is in effect less than 60 days and is not a renewal, WE may cancel for any reason provided WE mail YOU notice within this period. If WE cancel for non-payment of premium WE will give YOU at least 10 days notice. If WE cancel for any other reason WE will mail YOU at least 30 days notice.

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Fraud or material misrepresentation affecting this policy or in the presentation of claims thereunder or violation of any provisions of this policy.

Substantial increase in hazard, provided WE have secured approval for the cancellation for this reason from the commissioner of insurance.

YOU may be entitled to a refund as a result of the cancellation. If so, it will be sent to you. However, making or offering to make the refund is not a condition of cancellation.

Notice of Cancellation to YOU will be by certified mail except that in the case of cancellation for nonpayment of premium, notice shall be by certified mail or certificate of mailing. The mailing of notice shall be sufficient proof of notice.

The following CONDITIONS are added:

NONRENEWAL – If WE decide not to renew this policy, WE will mail or deliver to YOU at YOUR address shown in the declarations, written notice of OUR intention not to renew at least 30 days prior to the expiration date of this policy.

OPTIONAL ENDORSEMENT No. 051 is not available in Vermont.

The following applies to all Coverage Parts affording AUTO LIABILITY or GENERAL LIABILITY insurance:

VERMONT STATUTORY LIABILITY ENDORSEMENT

This policy is issued and delivered subject to the Laws of Vermont and particularly to Chapter 113, Title 8 of the Vermont Statutes, including the following statutory requirements forming a part of such Chapter:

WE will pay and satisfy any judgment that may be recovered against the INSURED upon any claim covered by this policy to the extent and within the limits of liability assumed thereby, and shall protect the INSURED against the levy of any execution issued upon any such judicial judgment or claim against the INSURED. No limitation of liability in this policy shall be valid if, after a judgment has been rendered against the INSURED in respect to his legal liability for

damages in a particular instance, WE continue the litigation by an appeal or otherwise, unless the INSURED shall stipulate with US, agreeing to continue such litigation;

No action shall lie against US to recover for any LOSS under this policy, unless brought within one year after the amount of such LOSS is made certain either by judgment against the INSURED after final determination of the litigation or by agreement between the parties with OUR written consent;

The insolvency or bankruptcy of the INSURED shall not release US from the payment of damages for INJURY sustained or LOSS occasioned during the life of the policy, and in case of such insolvency or bankruptcy an action may be maintained by the injured person or claimant against US under the terms of the policy, for the amount of any judgment obtained against the INSURED not exceeding the limits of the policy; and

Payment of any judicial judgment or claim by the INSURED for any of OUR liability hereunder shall not bar the INSURED from any action or right of action against US. In case of payment of LOSS or expense under this policy, WE shall be subrogated to all rights of the INSURED against any party, as respects such LOSS or expense, to the amount of such payment, and the INSURED shall execute all papers required and shall cooperate with US to secure to the company such rights.

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Coverage Part 900 – BASIC AUTO INSURANCE: (g)
Coverage Part 980 – UMBRELLA: (g) and (h)

The following exclusions are changed to delete "or stunting activity:"

Coverage Part 500 – GARAGE INSURANCE: (h)(2)
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Coverage Part 980 – UMBRELLA: (o)(2)(ii)

The following is added to Exclusion (c)(3) of Coverage Part 950 – GENERAL LIABILITY INSURANCE:

> This exclusion does not apply to any snowmobile or trailer designed for use with it if the INJURY occurs on any premises owned by, rented to or controlled by YOU.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY

FIFTY-ONE FIFTEEN OAK •
KANSAS CITY, MISSOURI 64112

(logo)

VERMONT

STATE AMENDATORY PART

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of any execution issued upon any such judicial judgment or claim against the INSURED. No limitation of liability in this policy shall be valid if, after a judgment has been rendered against the INSURED in respect to his legal liability for damages in a particular instance, WE continue the litigation by an appeal or otherwise, unless the INSURED shall stipulate with US, agreeing to continue such litigation;

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required and shall cooperate with US to secure to the company such rights.

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Coverage Part 830 – AUTO INSURANCE: (g)
Coverage Part 980 – UMBRELLA: (g) and (h)

The following exclusions are changed to delete "or stunting activity:"

Coverage Part 830 – AUTO INSURANCE: (h)(1)
Coverage Part 980 – UMBRELLA: (o)(2)(ii)

The following is added to Exclusion (c)(3) of Coverage Part 660 – GENERAL LIABILITY INSURANCE:

This exclusion does not apply to any snowmobile or trailer designed for use with it if the INJURY occurs on any premises owned by, rented to or controlled by YOU.

Draft No. 42129

67619

STATE OF VERMONT

DEPARTMENT OF BANKING AND INSURANCE

Montpelier, Vt., September 20, 1983

Received Ten and 00/100 Dollars

in payment of fees, as per schedule, from

Universal Underwritiers [sic] Ins. Co.
Fifty-One Fifteen Oak
Kansas City, MO 64112
Attn: Ralph W. Lind Asst. Sec.

Resident Agents	$	
Non-resident Agents		
Broker-S.L. Broker's Lic.		
Adjuster-Appraiser's Lic.		
Agent Application Fee		
Certification Fee		
Company Application Fee		
Company License Renewal		
Retaliatory Fees	10	00
Misc.		

Filing Fee
Re: Unicover III Progr.
Revision et al

ORIGINAL

DEFENDANT'S EXHIBIT R

TELEPHONE (816) 753-5800

(logo)

UNIVERSAL UNDERWRITERS INSURANCE COMPANY

FIFTY-ONE FIFTEEN OAK, KANSAS CITY, MISSOURI 64112

(Received Apr. 8, 1985)

April 1, 1985

Honorable David T. Bard, Commissioner
Vermont Insurance Department
State Office Building
120 State Street
Montpelier, Vermont 05602

Attention: Thomas C. Prindiville, CPCU
Chief of Insurance Analysis

RE: Unicover III Auto, Truck and Motorcycle Dealers Program
Endorsement No. 322
Vermont Pollution and Contamination Coverage
Coverage Part 950

Unicover III Parts Dealers Program
Endorsement No. 322P
Vermont Pollution and Contamination Coverage
Coverage Part 660

Dear Sir:

We are filing the above captioned endorsements to be attached to the General Liability Coverage Parts of our two Unicover III policies. These endorsements provide coverage for sudden and non-sudden pollution incidents on a claims-made basis.

In drafting our endorsements we have had reference to ISO's Vermont Contamination or Pollution Exception Endorsement GL 01 54. This endorsement has been filed with and approved by your department.

We trust that after you have had an opportunity to review these endorsements you will return the duplicates to us with your approval indicated.

Sincerely yours,

/s/ Ed Mason
Ed Mason, CPCU
Manager – Governmental Affairs

EM/lt.12

Approved 6-21-85

Denied _____

Effective as of 6-21-85

By: TFP

COMPARISON OF PRESENT FORMS OR ENDORSEM

CURRENT FORM
UNICOVER COVERAGE PART 950 GENERAL
LIABILITY INSURANCE

INSURING AGREEMENT – WE will pay all sums the INSURED legally must pay as damages (including punitive damages where insurable by law) because of INJURY to which this Coverage Part applies, caused by an OCCURRENCE arising out of the hazard shown in the declarations:

(e) INJURY caused by the dumping, discharge, or escape of irritants, pollutants, or contaminants. This exclusion does not apply if the discharge is sudden and accidental;

"OCCURRENCE" means an accident, including continuous or repeated exposure to conditions, which results in INJURY during the Coverage Part period neither intended nor expected by the INSURED. All INJURY arising out of a continuous or repeated exposure to substantially the same general conditions will be considered as arising out of one occurrence.

PROPOSED FORM

ENDORSEMENT NO. 322 VERMONT POLLUTION AND CONTAMINATION COVERAGE COVERAGE PART 950

The following is added to the INSURING AGREEMENT:

WE will also pay all sums the INSURED legally must pay as damages because of INJURY caused by an OCCURRENCE and arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants.

Any claim for such damages must be made in writing against an INSURED and reported to US during the policy period. Any such claim shall be deemed to have been made when written notice of such claim is received by the INSURED or US, whichever comes first.

All such claims sustained by any one person or organization as the result of any one OCCURRENCE shall be deemed to have been made at the time the first of those claims is made.

Exclusion (e) is changed to read:

(e) INJURY arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acid, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants. This exclusion does not apply to the insurance afforded by this endorsement.

"OCCURRENCE" means an accident, including continuous or repeated exposure to conditions, which result in a claim for INJURY being made during the Coverage Part period neither intended nor expected by the INSURED. All INJURY arising out of a continuous or repeated exposure to substantially the same general conditions will be considered as arising out of one occurrence.

ENDORSEMENT NO. 322
VERMONT POLLUTION AND CONTAMINATION COVERAGE
COVERAGE PART 950

Exclusion (e) is changed to read:

> (e) INJURY arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acid, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants. This exclusion does not apply to the insurance afforded by this endorsement.

The following is added to the INSURING AGREEMENT:

> WE will also pay all sums the INSURED legally must pay as damages because of INJURY caused by an OCCURRENCE and arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants.
>
> Any claim for such damages must be made in writing against an INSURED and reported to US during the policy period. Any such claim shall be deemed to have been made when written notice of such claim is received by the INSURED or US, whichever comes first.
>
> All such claims sustained by any one person or organization as the result of any one OCCURRENCE shall be deemed to have been made at the time the first of those claims is made.

With respect to this endorsement only, the definition of OCCURRENCE is changed to read:

"OCCURRENCE" means an accident, including continuous or repeated exposure to conditions, which result in a claim for INJURY being made during the Coverage Part period neither intended nor expected by the INSURED. All INJURY arising out of a continuous or repeated exposure to substantially the same general conditions will be considered as arising out of one OCCURRENCE.

COMPARISON OF PRESENT FORMS OR ENDORSEMENTS WITH REVISED FORMS OR ENDORSEMENTS

CURRENT FORM
UNICOVER COVERAGE PART 660 GENERAL LIABILITY INSURANCE

INSURING AGREEMENT – WE will pay all sums the INSURED legally must pay as damages (including punitive damages where insurable by law) because of INJURY to which this Coverage Part applies, caused by an OCCURRENCE arising out of the hazard shown in the declarations:

(e) INJURY caused by the dumping, discharge, or escape of irritants, pollutants, or contaminants. This exclusion does not apply if the discharge is sudden and accidental;

"OCCURRENCE" means an accident, including continuous or repeated exposure to conditions, which results in INJURY during the Coverage Part period neither intended nor expected by the INSURED. All INJURY arising out of a continuous or repeated exposure to substantially the same general conditions will be considered as arising out of one occurrence.

PROPOSED FORM
ENDORSEMENT NO. 322P VERMONT POLLUTION AND CONTAMINATION COVERAGE COVERAGE PART 660

The following is added to the INSURING AGREEMENT:

WE will also pay all sums the INSURED legally must pay as damages because of INJURY caused by an OCCURRENCE and arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants.

Any claim for such damages must be made in writing against an INSURED and reported to US during the policy period. Any such claim shall be deemed to have been made when written notice of such claim is received by the INSURED or US, whichever comes first.

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ENDORSEMENT NO. 322P
VERMONT POLLUTION AND CONTAMINATION COVERAGE
COVERAGE PART 660

Exclusion (e) is changed to read:

> (e) INJURY arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acid, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants. This exclusion does not apply to the insurance afforded by this endorsement.

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>
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With respect to this endorsement only, the definition of OCCURRENCE is changed to read:

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TELEPHONE (816) 753-5800

(logo)

UNIVERSAL UNDERWRITERS INSURANCE COMPANY

FIFTY-ONE FIFTEEN OAK, KANSAS CITY, MISSOURI 64112

May 21, 1985

Honorable David T. Bard, Commissioner
Vermont Insurance Department
State Office Building
120 State Street
Montpelier, Vermont 05602
Attn: Thomas C. Prindiville, CPCU
Chief of Insurance Analysis

RE: Unicover III
Auto, Truck and Motorcycle Dealers Program
Endorsement No.: 322
Vermont Pollution and Contamination Coverage
Coverage Part: 950

Unicover III
Parts Dealers Program
Endorsement No.: 322P
Vermont Pollution and Contamination Coverage
Coverage Part: 660

Dear Sir:

We filed the above captioned endorsements on April 1, 1985. Could we inquire concerning the status of these filings?

Thanks for your assistance in this matter.

Sincerely yours,

/s/ Ed Mason
Ed Mason, CPCU
Manager – Governmental Affairs

EM/wt.1

PLAINTIFFS EXHIBIT 6

INSURANCE SERVICES OFFICE

[LOGO] FILING AUTHORIZATION FORM

To the Commissioner of Insurance:

You are hereby authorized to accept as filed on behalf of the undersigned MEMBER or SUBSCRIBER of the INSURANCE SERVICES OFFICE such material specified on this form relating to Manuals of Classification, Rules and Rates, Rating Plans and Rules, Policy Forms and Endorsements and any information pertaining thereto, which are filed in your office by Insurance Services Office with respect to one or more kinds of insurance, subdivisions and kinds of insurance or classes or risks, or any part or combination of the foregoing for which the undersigned is now or hereafter licensed to transact business.

This Filing Authorization shall be deemed amended to the extent that any filing is made in your office directly by the undersigned company and is inconsistent with the filing of said Insurance Services Office.

This Filing Authorization replaces any authorization currently in your office on behalf of the undersigned company and may be revoked or amended at any time by such action as herein specifically set forth or by notification to your office by the undersigned company or by Insurance Services Office.

/s/ Leo J. Cisper
Signature of Official

Leo J. Cisper, Assistant Secretary
Typed Name and Title of Official

Universal Underwriters Insurance Company
(Zurich Insurance Company of Missouri until 1-1-83)
Name of Company

5115 Oak Street
Home Office Number/Street

Kansas City,	Missouri	64112
City	State	Zip Code

[Bold italic type represents hand written copy.]

circular

PLAINTIFFS EXHIBIT 11

Bulletin File

VERMONT DISCLOSURE TO INSUREDS ON CONTAMINATION OR POLLUTION EXCEPTION ENDORSEMENT DISTRIBUTED: SMP RULE APPROVED

Commercial Multiple Line CML-84-58
General Liability GL-84-158
(Rules/Forms)

REFERENCE

CML-84-54/GL-84-141 (6-4-84)

LIMITED DISTRIBUTION

We have limited the distribution of the attachments to this Circular. If you did *not* receive the attachments and wish to have the detailed information, you should contact your Home Office.

BACKGROUND

In Circular CML-84-54/GL-84-141, we announced the approval of Vermont Contamination or Pollution Exception Endorsement GL 01 54. This endorsement provides coverage for sudden and non-sudden pollution incidents on a claims-made basis subject to an aggregate limit.

The Insurance Department also approved Pollution Exclusion endorsements GL 21 31 and GL 21 32. These endorsements are used when an insured agrees to exclude Pollution Liability coverage.

You are required by Regulation 78-1, issued by the Vermont Department of Banking and Insurance, to provide each insured with a printed notice if you eliminate or modify any coverages, conditions or definitions which result in a *decrease* in benefits.

ISO ACTION

We have prepared the attached statement of changes regarding the reductions and broadenings in coverage.

SMP RULE

We have also revised SMP Rule 17. Liability Coverage Forms to refer the manual holder to CLM Division Six rule for use of GL 01 54.

The Vermont Insurance Department has approved this revision.

EFFECTIVE DATE

These charges are applicable to all policies written on or after *July 1, 1984*.

COMPANY ACTION

- Forms:

  You *must* advise insureds, upon renewal, of any reduction in coverage by providing a copy of the statement of changes or a similar notice.

- SMP RULE

  If you have authorized us to file on your behalf and decide:

  - to use this revision and effective date, you are *not* required to file anything with the Vermont Insurance Department.

- to use this revision but *not* the effective date, you should notify the Vermont Insurance Department prior to our effective date.
- *not* to use this revision, you should notify the Vermont Insurance Department prior to our effective date.

In all correspondence with the Vermont Insurance Department on this filing, you should refer to our Filing Designation Number S-84-OPLI1.

FUTURE ISO ACTION

We will issue revised SMP manual pages during July, 1984.

ATTACHMENTS

- Vermont Notice of Change
- Explanatory Memorandum – SMP Rule
- Vermont SMP Exception Page ML-E-1

/s/ William J. Giordano
William J. Giordano
Commercial Casualty Division
General Liability Rules and Forms

BUSINESSOWNERS LIABILITY INSURANCE
COMPREHENSIVE GENERAL
LIABILITY INSURANCE
COMPLETED OPERATIONS AND
PRODUCTS LIABILITY INSURANCE
CONTRACTUAL LIABILITY INSURANCE
MANUFACTURERS AND
CONTRACTORS LIABILITY INSURANCE
OWNERS, LANDLORDS AND
TENANTS LIABILITY INSURANCE

SMP LIABILITY INSURANCE
STOREKEEPERS INSURANCE

VERMONT
Important Changes in Your Policy

Pollution Exclusion Endorsement GL 21 31 is attached to your policy when you agree to eliminate the coverage for contamination or pollution liability. The exclusion in your policy relating to the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants now applies.

OWNERS AND CONTRACTORS
PROTECTIVE LIABILITY INSURANCE
POLLUTION EXCLUSION

Vermont
Important Changes in Your Policy

Pollution Exclusion Endorsement GL 21 32 is attached to your policy when you agree to eliminate the coverage for contamination or pollution liability. The exclusion in your policy relating to the discharge, disposal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants now applies.

VERMONT
IMPORTANT CHANGES IN YOUR POLICY

GL 01 54, Contamination or Pollution Exception Endorsement is now attached to your policy.

This endorsement provides coverage for injury or damage due to sudden or gradual discharge, dispersal,

release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants.

Changes

Coverage for sudden and accidental pollution events is now subject to an aggregate limit. This is a *reduction* in coverage.

Coverage now applies to gradual pollution events on a claims-made basis subject to the aggregate limit. This is a *broadening* of coverage.

EXPLANATORY MEMORANDUM
COMMERCIAL LINES MANUAL
DIVISION NINE – MULTIPLE LINE –
SPECIAL MULTI-PERIL POLICY SUBDIVISION

Contamination or Pollution Exception Endorsement (Vermont) GL 01 54 was approved for an effective date of July 1, 1984. This endorsement must be attached to all liability policies issued in Vermont.

At the Vermont Insurance Department's request that we make reference to GL 01 54 in Division Nine, we are filing an SMP exception to Rule 17. Liability Coverage Forms under Section III – Liability Coverage. This exception adds instructions to Section A of this rule that refer the manual holder to the General Liability rules for use of GL 01 54.

Matter *underlined* is new; matter in brackets [ ] is deleted.

VERMONT (44)

COMMERCIAL LINES MANUAL
DIVISION NINE – MULTIPLE LINE
SPECIAL MULTI-PERIL POLICY SUBDIVISION
EXCEPTION PAGE

ADDITIONAL RULES

50. Attach Vermont Amendatory Endorsement IL 02 19 to all special Multi-Peril Policies covering risks in the State of Vermont.

55. Attach Vermont Statutory Liability Endorsement IL 01 26 to all policies.

EXCEPTION

SECTION III – LIABILITY COVERAGE

17. LIABILITY COVERAGE FORMS

Add the following to Section A:

Refer to General Liability Division 6 Exception Pages for the use of the Vermont Contamination or Pollution Exception Endorsement GL 01 54.

(Logo)

INTEROFFICE MEMORANDUM

August 9, 1984

To: ~~Al Birch~~
~~Bob Oakes~~

From: Ed Mason

I attach a copy of an ISO bulletin published June 4, 1984 concerning Vermont's contamination or pollution

endorsements. As I read this they are requiring an endorsement providing coverage for "sudden and non-sudden pollution incidents on a claims-made basis subject to an aggregate limit." Otherwise they are requiring endorsement (illegible) deleting this coverage.

Please advise which way you want to go on this matter.

EM/mt.6

8/22/84

Bob & Ed – I am not interested at this time in changing over to a claims-made basis. It would be inconsistent with GL & represents some negative future implications. Can I assume our GL approach will stand? In regard to Genl Liab what are the exceptions referred to and could we use our current approach if separate pol was issued?

Al – we have no choice – these endorsements were MANDATORY. Also, we can't delete them or charge for the coverage without the Insured's permission. We're even required to write it as a claims filed-made basis. How do you propose to get around this?

/s/ Bob Oakes

7/23/84

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circular June 4, 1984

cc: Ed Mason

Special instructions from Al Birch

See file attached.

Ed Mason

VERMONT CONTAMINATION OR POLLUTION EXCEPTION ENDORSEMENT AND RULE AND ADDITIONAL RULE FOR VERMONT STATUTORY LIABILITY ENDORSEMENT APPROVED

Commercial Multiple Line CML-84-54
General Liability GL-84-141
(Rules/Forms)

LIMITED DISTRIBUTION

We have limited the distribution of the attachments to this circular. If you did *not* receive the attachments and wish to have the detailed information, you should contact your Home Office.

BACKGROUND

The Pollution Liability program was approved for use in Vermont effective January 1, 1983. In conjunction with this approval, Vermont Contamination and Pollution Endorsement GL 01 11, which deleted the pollution exclusion in the General Liability policy, was withdrawn.

ISO ACTION

We have:

- developed Vermont Contamination or Pollution Exception Endorsement GL 01 54. This endorsement provides coverage for sudden and non-sudden pollution incidents on a claims-made basis subject to an aggregate limit.

- developed a rule concerning the use of GL 01 54. This endorsement is to be attached without charge to all policies providing general liability coverage issued in Vermont unless the insured agrees to delete this coverage. A charge for this endorsement can be made only with the consent of

the insured in accordance with the Consent To Rate provisions of the Vermont Statute.

- filed Pollution Exclusion endorsements GL 21 31 and GL 21 32 for use when an insured agrees to exclude Pollution Liability coverage.

- filed an additional rule requiring the attachment of IL 01 26, Vermont Statutory Liability Endorsement, to all policies issued in Vermont. This endorsement complies with the provisions of Chapter 113, Title 8, of the Vermont Statutes.

INSURANCE DEPARTMENT ACTION

The Vermont Insurance Department has approved this filing.

IMPORTANT NOTICE

Endorsement IL 01 26 *must* be attached to *all* policies issued in Vermont.

Endorsement GL 01 54 *must* be attached to *all* policies providing general liability coverage in Vermont unless the coverage is specifically excluded.

EFFECTIVE DATE

These changes are applicable to all policies written on or after *July 1, 1984.*

COMPANY ACTION

If you have authorized us to file on your behalf and decide:

- to use these forms and effective date, you are *not* required to file anything with the Vermont Insurance Department.

- to use these forms but *not* the effective date, you should notify the Vermont Insurance Department prior to our effective date.

- *not* to use these forms, you should notify the Vermont Insurance Department prior to our effective date.

In all correspondence with the Vermont Insurance Department on this filing, you should refer to our Filing Designation Number GL-84-OPLI1.

FORMS ORDERING

Supplies of Endorsements:

- GL 21 31

- GL 21 32

are available on the appropriate current order blank (General Liability, SMP & Businessowners).

- Supplies of endorsements IL 01 26 are available as a write-in item on the appropriate current order blank (General Liability, SMP & Businessowners). Please:

    - specify the form number and edition date.

- Supplies of endorsement GL 01 54 will *not* be available through our Central Distribution System until on or about August 1, 1984.

ATTACHMENTS

- Explanatory Memorandum

- GL 01 54, Contamination or Pollution Exception (Vermont)

- GL 21 31 Pollution Exclusion
- GL 21 32 Pollution Exclusion (OCP)
- Vermont Exception page with rules for use of these endorsements.

/s/ William J. Giordano
William J. Giordano
General Liability Division

EXPLANATORY MEMORANDUM

VERMONT POLLUTION LIABILITY PROGRAM

We have developed an endorsement, GL 01 54, Contamination or Pollution Exception (Vermont). This endorsement provides coverage for claims made against an insured arising out of a sudden or non-sudden pollution incident. Coverage provided under this endorsement will be subject to an aggregate limit. Pollution Exclusion Endorsements GL 21 31 and GL 21 32 will also be available to totally exclude pollution coverage on a risk by risk basis where the insured agrees to exclude the coverage or purchases a separate pollution liability policy.

Companies will be instructed to attach GL 01 54 to *all* general liability policies issued in Vermont with certain exceptions. The appropriate rule, a copy of which is attached, has been developed for inclusion on the Vermont State Exception pages.

In conjunction with this filing, we are submitting an additional rule requiring the attachment to all policies Vermont Statutory Liability Endorsement IL 01 26. This endorsement complies with the provisions of Chapter 113, Title 8, of the Vermont Statutes. Refer to our filing designation CL-83-OSL-1.

GL 01 54
(ed. 04 84)

CONTAMINATION OR POLLUTION EXCEPTION (VERMONT)

Limits of Liability
$ _____ aggregate

Additional Premium $_____

I. It is agreed that the exclusion relating to the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants is deleted.

II. It is also agreed that, which respect to *bodily injury* or *property damage* arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants:

A. The first paragraph of Coverage A – Bodily Injury Liability; Coverage B – Property Damage Liability is replaced by the following:

COVERAGE A – BODILY INJURY LIABILITY
COVERAGE B – PROPERTY DAMAGE LIABILITY

The company will pay on behalf of the *insured* all sums which the *insured* shall become legally obligated to pay as damages because of

A. *bodily injury* or
B. *property damage*

caused by an *occurrence* to which this insurance applies provided that the claim for such damages is

first made in writing against the *insured* and reported to the company during the policy period.

A claim by a person or organization seeking damages shall be deemed to have been made when written notice of such claim is received by the *insured* or by the company, whichever comes first.

All claims for damages because of *bodily injury* or *property damage* sustained by any one person or organization as a result of any one *occurrence* shall be deemed to have been made at the time the first of those claims is made.

The company shall have the right and duty to defend any suit against the *insured* seeking damages on account of such *bodily injury* or *property damage,* even if any of the allegations of the suit are groundless, false, or fraudulent.

The company may make such investigation and settlement of any claim or suit as it deems expedient. The company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

B. Section III Limits of Liability is replaced by the following

Regardless of the number of (1) *insured's* under this policy, (2) persons or organizations who sustain *bodily injury* or *property damage,* or (3) claims made or suits brought on account of *bodily injury* or *property damage,* the company's liability is limited as follows:

(a) The total liability of the company for all damages because of all *bodily injury* and *property damage* to which this insurance applies shall not exceed the limit of liability stated in this endorsement as "aggragate".

(b) Subject to the above provision with respect to "aggragate", the total liability of the company in any one *occurrence* for all damages because of all *bodily injury* and *property damage* to which this insurance applies shall not exceed the limits of liability stated in the declarations of this policy as "each *occurrence*".

For the purpose of determining the limit of the company's liability, all *bodily injury* and *property damage* arising out of a sudden or gradual discharge, dispersal, release or escape of irritants, contaminants or pollutants, including all *bodily injury* and *property damage* arising out of all subsequent exposure of persons and property to such substances, shall be considered as arising out of a single *occurrence*.

C. The definition of *bodily injury* is replaced by the following:

"bodily injury" means bodily injury, sickness or disease sustained by any person, including death at any time resulting therefrom;

D. The definition of *property damage* is replaced by the following:

"property damage" means (1) physical injury to or destruction of tangible property including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an *occurrence*;

III. All other provisions of the policy apply to coverage afforded by this endorsement.

This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of policy.)

Endorsement effective Policy No. Endorsement No.

Named Insured

Countersigned by _____
(Authorized Representative)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY INSURANCE

POLLUTION EXCLUSION

It is agreed that exclusion (i) is replaced by the following:

(i) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water;

This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of policy.)

Endorsement effective Policy No. Endorsement No.

Named Insured

Countersigned by _____
(Authorized Representative)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

BUSINESSOWNERS LIABILITY INSURANCE
COMPREHENSIVE GENERAL LIABILITY INSURANCE
COMPLETED OPERATIONS AND PRODUCTS LIABILITY INSURANCE
CONTRACTUAL LIABILITY INSURANCE
MANUFACTURERS AND CONTRACTORS LIABILITY INSURANCE
OWNERS, LANDLORDS AND TENANTS LIABILITY INSURANCE
SMP LIABILITY INSURANCE
STOREKEEPERS INSURANCE

POLLUTION EXCLUSION

It is agreed that the exclusion relating to the discharge, dispersal, release or escape of smoke, vapors, soot, fumes,

acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants is replaced by the following:

> to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water; but this exclusion does not apply to bodily injury or property damage included within the products hazard or the completed operations hazard if the discharge, dispersal, release or escape originates away from premises owned by, rented or loaned to a named insured;

This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of policy.)

Endorsement effective Policy No. Endorsement No.

Named Insured

Countersigned by _____
(Authorized Representative)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY INSURANCE

POLLUTION EXCLUSION

It is agreed that exclusion (i) is replaced by the following:

(i) to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water;

DIVISION SIX GENERAL LIABILITY GENERAL LIABILITY OTHER THAN PROFESSIONAL LIABILITY EXCEPTION PAGE

ADDITIONAL RULES

1. SNOWMOBILES ENDORSEMENT GL 01 15
   Attach Snowmobiles Endorsement GL 01 15 to all policies issued in Vermont.

2. AMENDATORY ENDORSEMENT – VERMONT IL 02 19
   Attach Amendatory Endorsement IL 02 19 to all policies issued in Vermont.

3. VERMONT STATUTORY LIABILITY ENDORSEMENT IL 01 26

Attach Vermont Statutory Liability Endorsement IL 01 26 to all policies issued in Vermont.

ADDITIONAL RULE

CONTAMINATION OR POLLUTION EXCEPTION ENDORSEMENT GL 01 54

Attach Contamination or Pollution Exception Endorsement GL 01 54 to all policies issued in Vermont providing general liability coverage. This endorsement affords coverage for sudden and non-sudden pollution incidents on a claims-made basis, subject to an aggregate limit. The aggregate limit shall be the sum of the occurrence limits for bodily injury and property damage coverage afforded by the policy.

This endorsement is to be attached without charge unless written application for a charge, with the consent of the insured is made to the Commissioner pursuant to the requirements of the Vermont Statutes.

Pollution Exclusion Endorsements GL 21 31 and GL 21 32 are also available to totally exclude pollution coverage on a risk by risk basis:

(A) if the risk purchases a separate pollution liability policy; or

(B) if the risk agrees to exclude the coverage with such exclusion filed with the Commissioner pursuant to the requirements of the Vermont Statutes.

GENERAL LIABILITY OTHER THAN PROFESSIONAL SUB-DIVISION

SECTION I – GENERAL RULES

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2. EXCEPTIONS TO COMMON GENERAL RULES

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3. POLICY WRITING MINIMUM PREMIUM

A. For prepaid policies, apply a $50 minimum premium regardless of term.

B. For annual premium payment plan policies or continuous policies, apply a $50 minimum premium for each annual period.

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4. BASES OF PREMIUM

Replace E.1. with the following:

J. The payroll of executive officers of a corporation. The executive officers of a corporation are the President, any Vice-President, Secretary, Treasurer and other officers elected or appointed according to the charter or by-laws of the corporation. Use the average weekly payroll of each executive officer. Do not use more than $300 per week or less than $100 per week as the payroll of any individual executive officer.

Exceptions: The payroll of all executive officers engaged primarily in clerical operations or as salesmen shall not be included for premium purposes except where the classification

phraseology or footnotes require the inclusion of clerical or salesmen payroll.

And the following as E.l.k. and reletter paragraph k. to l.

k. The payroll of individual insureds or co-partners. Use $10,400 as the annual payroll of each individual insured or co-partner covered under the policy.

Exception: The payroll of all individual insureds or co-partnerships engaged primarily in clerical operations or as salesmen shall not be included for premium purposes except where the classification phraseology or footnotes require the inclusion of clerical or salesmen payroll.

1. *Ed Mason*
2. *A.J. Birch*

8-29-84

Al I do not understand why this came back to me yet. I believe I directed to you with a question.

Ed

To Ed Mason

It was sent back to you for clarification

1) What are the exceptions referred to?

2) Do we have to change GL?

3) If we totally exclude off genl liab, must we offer claims – made on separate pol?

I cant respond to Bob until above is clarified

Thanks, A.J. Birch
8/29/84

INTEROFFICE MEMORANDUM

August 31, 1984

To: Al Birch

From: Ed Mason *E. M.*

Subject: Vermont Contamination or Pollution Exception Endorsement

In answer to your note regarding this General Liability provision for Vermont:

1. The two exceptions are:
   A. If the insured signs an agreement that he doesn't want the coverage.
   B. If such coverage is afforded to him someplace else.
2. We do not have to change the Garage Liability for Vermont. This has already been taken care of by the Vermont exception page which states "the following exclusions, pertaining to pollution and contamination, are deleted with respect to any AUTO insured by this policy and licensed or principally garaged in, or used for Garage Operations in Vermont; Coverage Part 500 – Garage Insurance; (m) and (n), Coverage Part 900 – Basic Auto Insurance; (g), Coverage Part 980 – Umbrella; (g) and (h).
3. If the insured agrees to exclude the coverage, with such exclusion filed with the Commissioner pursuant to the requirements of the Vermont statutes we are not required to offer a claims made form on a separate policy. The insured can choose to "go bare". It is my own opinion that he would be foolish to do so since the deletion of the pollution exclusion, in other words having the coverage, costs him nothing.

I think that this answers the questions that you have posed. It brings us back to the original question as to how you want General Liability handled in Vermont.

EM/bt.4

(Logo) *1-15-85*
3-15-85
4-1-85

INTEROFFICE MEMORANDUM

Date: September 10, 1984

To: Ed Mason

From: Al Birch *A. J. B.*

Subject: Pollution Liability – Vermont

Effective July 1, 1984, only under the general liability coverage parts, we are mandated to provide sudden and gradual pollution liability on a claims made basis without a charge.

In view of the aforementioned, by copy of this letter, I am asking Bob Oakes to change the general liability coverage parts to afford as required. We also need to create an endorsement to exclude the coverage entirely.

In view of the significant adverse potential this creates, particularly in the auto dealer risk class, we need to amend our guidelines to allow the general liability coverage part only on a submit basis. Any other risk class utilizing the general liability coverage parts must also be closely scrutinized for the additional adverse potential it

too may create. Pat, Jim and Phil will also get a copy of this memo in order to comply with said change.

I believe this answers your question and provides a track for us to follow.

cc: Jack Overfelt
Bob Oakes
Pat Everman
Jim Kirby
Phil Phillips

T2-7

operations

(Logo) improvement

1-14-85

Followup sent Bob Oakes this date

1-15-85

Oakes returned to me I consulted Birch & returned to Oakes.

Ed

3-18-85 Birch saw me some days ago & said this still needs to be solved

Ed

From the Desk of Ed Mason

Check on Vermont and Pollution Liability as regards effective date and also Garage Liability

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3-21-85

Tell Oakes there is "no problem" on the filing of the endorsement

(Logo)

INTEROFFICE MEMORANDUM

Date: March 25, 1985

To: M. KENDRICK

From: B. OAKES *R.L.O.*

Subject: Endorsements 322, and 322P (Parts Version) Vermont Pollution Liability

I'm sending you approximately 200 copies of each of these endorsements for use on U3 policies issued in Vermont. This coverage is mandated by Vermont as applicable to all General Liability coverages. I presume you've been receiving copies of all ISO bulletins since early '84. If not, write to Ed Mason for copies.

We do not have a U2 version since you told me a month ago that you only had one account with General Liability coverage. That policy should be converted to a U3 policy.

I believe it is important that you discuss these endorsements with Ed Grogan as the coverage is on a "claims made" basis – also mandated.

Ed Mason will notify you as soon as this version has been approved by the Insurance Department.

RLO/bb
cc: B. Merritt
A. Birch
E. Grogan
J. Kirby
P. Phillips
E. Mason

Ed –
Please send me copies.

/s/ MK

sent 4-2-85

MK

(Logo)

INTEROFFICE MEMORANDUM

Date: March 25, 1985

To: M. KENDRICK

From: B. OAKES *R.L.O.*

Subject: Endorsements 322, and 322P (Parts Version) Vermont Pollution Liability

I'm sending you approximately 200 copies of each of these endorsements for use on U3 policies issued in Vermont. This coverage is mandated by Vermont as applicable to all General Liability coverages. I presume you've been receiving copies of all ISO bulletins since early '84. If not, write to Ed Mason for copies.

We do not have a U2 version since you told me a month ago that you only had one account with General Liability coverage. That policy should be converted to a U3 policy.

I believe it is important that you discuss these endorsements with Ed Grogan as the coverage is on a "claims made" basis – also mandated.

Ed Mason will notify you as soon as this version has been approved by the Insurance Department.

Should you decide (at this late date) not to file, let Mike know.

Copies attached if you do file for approval.

RLO/bb
cc: B. Merritt
A. Birch
E. Grogan
J. Kirby
P. Phillips
E. Mason

Memo to file

3-28-85

Today I called Bill Giordano of ISO regarding their Vermont Contamination and Pollution Endorsements. He gave me this background. Vermont used to have an exception deleting the Pollution exclusion under General Liability. When ISO developed & filed the Pollution policy they withdrew the Vermont endorsement to General Liability restoring the exclusion.

The Dept. got flak from agents etc. and so negotiated with ISO to file the present Contamination and Poilution endorsement back in June of 1984. We finally got around to our Unicover III endorsement & are filing. Should not be a problem.

Ed M

Rough Draft of filing letter has been dictated

COMPARISON OF PRESENT FORMS OR ENDORSEMENTS WITH REVISED FORMS OR ENDORSEMENTS

CURRENT FORM
UNICOVER COVERAGE PART 950 GENERAL LIABILITY INSURANCE

INSURING AGREEMENT – WE will pay all sums the INSURED legally must pay as damages (including punitive damages where insurable by law) because of INJURY to which this Coverage Part applies, caused by an OCCURRENCE arising out of the hazard shown in the declarations:

(e) INJURY caused by the dumping, discharge, or escape of irritants, pollutants, or contaminants. This exclusion does not apply if the discharge is sudden and accidental;

"OCCURRENCE" means an accident, including continuous or repeated exposure to conditions, which results in INJURY during the Coverage Part period neither intended nor expected by the INSURED. All INJURY arising out of a continuous or repeated exposure to substantially the same general conditions will be considered as arising out of one OCCURRENCE.

PROPOSED FORM
ENDORSEMENT NO. 322 VERMONT POLLUTION AND CONTAMINATION COVERAGE COVERAGE PART 950

The following is added to the INSURING AGREEMENT:

WE will also pay all sums the INSURED legally must pay as damages because of INJURY caused by an OCCURRENCE and arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants.

Any claim for such damages must be made in writing against an INSURED and reported to US during the policy period. Any such claim shall be deemed to have been made when written notice of such claim is received by the INSURED or US, whichever comes first.

All such claims sustained by any one person or organization as the result of any one OCCURRENCE shall be deemed to have been made at the time the first of those claims is made.

Exclusion (e) is changed to read:

(e) INJURY arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acid, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants. This exclusion does not apply to the insurance afforded by this endorsement.

"OCCURRENCE" means an accident, including continuous or repeated exposure to conditions, which result in a claim for INJURY being made during the Coverage Part period neither intended nor expected by the INSURED. All INJURY arising out of a continuous or repeated exposure to substantially the same general conditions will be considered as arising out of one OCCURRENCE.

COMPARISON OF PRESENT FORMS OR ENDORSE

CURRENT FORM
UNICOVER COVERAGE PART 660 GENERAL
LIABILITY INSURANCE

INSURING AGREEMENT – WE will pay all sums the INSURED legally must pay as damages (including punitive damages where insurable by law) because of INJURY to which this Coverage Part applies, caused by an OCCURRENCE arising out of the hazard shown in the declarations:

(e) INJURY caused by the dumping, discharge, or escape of irritants, pollutants, or contaminants. This exclusion does not apply if the discharge is sudden and accidental;

"OCCURRENCE" means an accident, including continuous or repeated exposure to conditions, which results in INJURY during the Coverage Part period neither intended nor expected by the INSURED. All INJURY arising out of a continuous or repeated exposure to substantially the same general conditions will be considered as arising out of one occurrence.

PROPOSED FORM

ENDORSEMENT NO. 322P VERMONT POLLUTION AND CONTAMINATION COVERAGE COVERAGE PART 660

The following is added to the INSURING AGREEMENT:

WE will also pay all sums the INSURED legally must pay as damages because of INJURY caused by an OCCURRENCE and arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants.

Any claim for such damages must be made in writing against an INSURED and reported to US during the policy period. Any such claim shall be deemed to have been made when written notice of such claim is received by the INSURED or US, whichever comes first.

All such claims sustained by any one person or organization as the result of any one OCCURRENCE shall be deemed to have been made at the time the first of those claims is made.

Exclusion (e) is changed to read:

(e) INJURY arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acid, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants. This exclusion does not apply to the insurance afforded by this endorsement.

"OCCURRENCE" means an accident, including continuous or repeated exposure to conditions, which result in a claim for INJURY being made during the Coverage Part period neither intended nor expected by the INSURED. All INJURY arising out of a continuous or repeated exposure to substantially the same general conditions will be considered as arising out of one OCCURRENCE.

DEFENDANTS EXHIBIT CC

82-a-14
Form APA-5a

APPENDIX E

COVER SHEET FOR ADOPTED RULE

1. TITLE OR SUBJECT OF RULE: Filing and Statistical Reporting Standards
2. AGENCY: Department of Banking and Insurance
3. AGENCY'S REFERENCE NUMBER (If any): 81-3
4. SECRETARY OF STATE'S REFERENCES NUMBER FOR EARLIER PROPOSED RULE: 81-P88
5. THIS RULE TAKES EFFECT FROM April 20, 1982 THROUGH until withdrawn
6. LIST SPECIFIC STATUTORY SECTIONS GIVING AUTHORITY FOR THIS RULE: 8 VSA 101 § 3541; 127 § 4656; 3 § 75
7. DOES THIS ADOPTED RULE CONTAIN A RULE BY REFERENCE? Yes ___ No X
   If yes, attach statement required by 3 V.S.A. Section 838(d).
8. SUMMARIZE CHANGES MADE TO THIS RULE SINCE IT WAS PROPOSED
   (Attach additional sheets if necessary. If no change, write "None".)
   See Attached Sheet.
9. HAVE THE ECONOMIC COSTS AND BENEFITS OF THIS RULE CHANGED SINCE IT WAS PROPOSED? Yes ___ No X
   If yes, attach a new "Summary of Economic Impact" (Form APA2).

10. THE AGENCY COMPLETED PROCEDURAL REQUIREMENTS ON THESE DATES:

A.	Proposed rule filed with Interagency Committee on Administrative Rules	9-17-81
B.	Proposed rule filed with Secretary of State	9-17-81
C.	First publication	10-1-81
D.	Second publication	10-8-81
E.	Hearing date or dates (If applicable)	11-5-81
F.	Deadline for filing comments	11-19-81
G.	Final proposed rule filed with Legislative Council and Secretary of State	2-26-82

11. CERTIFICATION BY ADOPTING OFFICER

I have reviewed this rule. To the best of my knowledge, we in the agency have complied with all requirements of 3 V.S.A. Chapter 25 and with the rules of the Secretary of State's office and the legislative Committee on Administrative Rules issued under that chapter. This rule is the most advantageous method for achieving the regulatory purpose at the least cost.

Date: March 31, 1982

("Adopting officer" is the official empowered by statute to issue the rule; must sign personally and cannot delegate.)

Signature: /s/ George A. Chaffee

Name (Type or print): George A. Chaffee

Title: Commissioner for Banking and Insurance

12. ATTACHMENTS:

___	Summary of economic impact (Form APA-2A; if applicable)	0 pages
___	Incorporation by reference statement (Form APA-3A; if applicable)	0 page(s)
X	Adopting page (Form APA-4A)	1 page
X	Text of rule	9 page(s)
X	Other: _____	1 page(s)

Attachment

Answer to Question 8.

SUMMARIZED CHANGES MADE TO RULE 81-3

The following are the changes that have been made:

1. Section IV, 10-1-81 changed to 4-20-82.

2. Section V, paragraph (F), line 7, the word "of" changed to "or".

Section V. paragraph (F), last paragraph, the word "prevalent" changed to "prominent".

4. Section IX, the word "etc." removed and the words "rules and forms" inserted.

Section IX, the word "thereto" removed and the words "in rates and rules" inserted.

Section IX, the following two sentences have been added to the end of the second paragraph:

> "Any insurer submitting a policy(ies) or form(s) reference filing may if so described therein, automatically reference future rating organization changes or revisions to the policy(ies) or form(s) being referenced. Such a filing should clearly indicate that this is the insurer's intent."

These sentences were deleted from the last paragraph of Section IX. In other words, the sentences were moved from the last paragraph to the second paragraph in Section IX.

In Section IX, fourth paragraph, October 1, 1981 removed and April 20, 1982 inserted. In same paragraph, January 1, 1982 removed and September 1, 1982.

5. In Form 103 9/81, the indefinite article "a" removed, and the words "the immediate" inserted.

6. In Form 104 9/81, the number 300 removed and the number 105 inserted.

7. In Form 105 9/81, line 3(b), "for a" removed. Line 3(c), the word "calendar" removed. Line 10(c), the word "new" removed "and other" inserted. Line 11 was eliminated.

Form AP

APPENDIX D
VERMONT ADMINISTRATIVE RULE
ADOPTING PAGE

PLEASE DON'T WRITE IN THIS SPACE:
Effective Date: April 30,
Expiration Date:

1. TITLE OR SUBJECT:

   Filing and Statistical Reporting Standards

2. AGENCY:

   Department of Banking and Insurance

3. TYPE OF RULE

   ___ Proposed Rule

   X Adopted Rule

   ___ Emergency Rule

6. AGENCY'S REFERENCE NUMBER (If any):

   81-3

5. EFFECT ON EXISTING RULES:

   None

6. STATUTORY AUTHORITY:

   8 VSA 101 § 3541; 127 § 4656; 3 § 75

Action 1.

A new rule, Department of Banking and Insurance Regulation 81-3 entitled "Filings and Statistical Reporting Standards" is proposed to read as follows in Sections I through XIII and Attachments F 103, F 104 and F 105.

REGULATION 81-3

FILINGS AND STATISTICAL REPORTING STANDARDS

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Regulation 81-3

Filings and Statistical Reporting Standards

Section I – Purpose

The purposes of this regulation are to inform insurers of the procedures to be followed for submitting rule, rate and/or form filings to this Department, to specify those circumstances when it is not necessary to file rule, rate and/or form changes, and to clarify the statistical and experience reporting procedures this Department requires.

Section II – Authority

This regulation is issued pursuant to authority granted to the Commissioner under 8 V.S.A., Chapter 101, Subchapter 6, § 3541; Chapter 127 § 4656; and Chapter 3 § 75.

Section III – Applicability and Scope

This regulation applies to the following types of insurance, and all rules, rates, policies and forms thereof:

(A) All property and casualty insurance policies, forms, endorsements, rider, declaration pages, certificates of insurance, renewal certificates and applications, whether primary or excess, which are to constitute or become a part of an insured's contract.

(B) All policies, forms, riders, endorsements, certificates of insurance and applications, which are to constitute or become a part of an insured's contract, covering

loss or damage resulting from an accident to, or injury suffered by, an employee or other person.

(C) All other liability and worker's compensation insurance policies, forms, riders, endorsements, certificates of insurance and applications which are to constitute or become a part of the insured's contract; and which apply as excess insurance over other policies, or as excess insurance over a self-insured retention or deductible.

(D) All blank or general endorsements, manuscript policies, forms or endorsements, and all other documents which are to constitute or become a part of an insured's contract of insurance.

Section IV – Effective Date

This regulation shall apply to all filings specified herein which are made on or after April 20, 1982.

As of the effective date of this regulation and unless otherwise withdrawn, the Department is withdrawing its Bulletin Numbers 1, 2, 17, 26, 39 and 40.

Section V – Definitions

(A) All references herein to the "Department" means the Vermont Department of Banking and Insurance.

(B) "Manuscript policies, forms, endorsements" refers to those policies, forms, endorsements and every

other document which are specifically compiled or constructed to accommodate the particular or unique circumstances or insurance needs of individual risks or insureds.

(C) "Rating Organization" means any organization which is authorized to file rules, rates and/or policies, forms or endorsements on behalf of member, subscriber or other supporting insurers engaged in the business of insurance in Vermont.

(D) The phrase "File and Use" refers to the filing procedure outlined in Title 8, § 3541 (b).

(E) "Property and Casualty Insurance" includes the types and kinds of insurance outlined in Title 8, Section 3301, Subsection (a), subdivisions (3) through (10).

(F) A "Consent to Rate" filing is any filing submitted to the Department pursuant to Title 8, Section 4655(b). This procedure is designed to be used when a risk, which is not otherwise acceptable to an insurer at its standard file rates, would be written and acceptable at rates above said standard rates and/or would be acceptable if written eliminating coverage for a specified exposure(s), or subject to a non-standard coverage form. This procedure applies on an individual risk basis only.

The "Consent to Rate" filing may be submitted directly by the insurer, or by its agent with the approval of the insurer unless disapproved by the Department within 30 days.

Such a filing becomes effective as of the date that it is received by the Department, or on the date specifically requested within the filing.

The "Consent to Rate" filing form must be signed and dated by the insured and shall contain the following basic information:

1. Name and Address of the Insurance Company and Agent, if any
2. Name and Address of the Insured
3. Description and Location of the Risk
4. Effective Date Desired (Date of Department's Receipt, or Other Date)
5. Manual Premium, and Higher Premium Charged (if any)
6. Reason for Higher Premium Charged or Non-Standard Form Used
7. Description of Exposure or Coverage Eliminated (if any)
8. Insured's Signature and Date Signed
9. Name, Title and Signature of the Employee (or Agent) of the Insurance Company Attesting to the Accuracy of the Filing Submission
10. Name and Address of Broker of Record, if any

If the "Consent to Rate" filing is used in connection with any risk which is eligible for coverage under some risk sharing plan, such as the Vermont Automobile Insurance Plan, the insurer's form must contain a prominent statement advising the insured of his eligibility for coverage under that plan. Furthermore, the insured shall be informed of the insurer's premium rate under such a risk sharing plan; and it shall be clearly shown on its "Consent to Rate" form.

(G) "Rate" or "Rates" refer to the unit of insurance cost(s) and includes minimum premiums, premiums, rating plans, rating systems, tables, factors and all other elements used in computing the cost of insurance.

(H) The reference(s) to "policy and/or form" also includes an endorsement, rider and every other document comprising a part of a contract of insurance.

Section VI – General Requirements

(A) Address all rate, rule, policy and form filings to Chief of Insurance Rate Analysis, Vermont Banking and Insurance Department, 120 State Street, Montpelier, Vermont 05602.

Where a filing is to apply to more than one insurer within a group of insurers, a separate filing transmittal letter must be forwarded for each insurer within the group.

(B) The filing transmittal letter shall contain a descriptive caption. The caption shall briefly identify the line of insurance or program to which the filing pertains, such as "Businessowner Program", "Dwelling Fire", "Homeowners Program", etc. The caption shall also include a brief description of the purpose of the filing, such as "Rule Revision", "Rate Increase", etc. Where the insurer maintains a filing numbering system, it may list its filing number in the caption. All subsequent correspondence to the Department on the filing shall include the caption in the identical form as it was displayed in the original filing transmittal letter; and, in addition, shall list the date of the original filing transmittal letter (and

the Department's File Number, if known). In order to expedite the filing process and to reduce correspondence, the filing should be reasonably documented and self-explanatory. If, for example, expense ratios are in a filing, or expense ratios are requested, an explanation as to how the ratios were obtained must be provided.

(C) All rate, rule, policy and form filings (with the exception of Worker's Compensation rates, rules, policies and forms, Liability Insurance policies and forms, and Automobile Liability Insurance Rate increases of more than 10% in any year, applicable in the state as a whole or in a given rating territory) are subject to what is commonly known as "File and Use" procedures. The filing is considered officially submitted when the Department receives it. The insurer(s) may begin using the new or revised rule, rate, policy or form thirty (30) full days after its receipt by the Department, unless it is disapproved by the Department within this thirty (30)-day period. Since Vermont statutes require that certain policy form(s), rule(s) and rate(s) must be filed, the policy form(s), rule(s) or rate(s) shall not be considered filed, unless submitted in accordance with the regulation.

(D) If an insurer or other filer wishes written confirmation of the Department's receipt of a filing, and has enclosed an extra copy of the filing transmittal letter (and a postage paid self-addressed return envelope), the Department will return the extra copy of the filing transmittal letter stamped "Received" with the date, "State of Vermont Division of Insurance". This letter shall also contain the signature of the person with the Department who is responsible for reviewing the filing. Unless disapproved the filing may be used immediately after said

thirty (30)-day waiting period, or any time thereafter if so specified in the filing. In any event, the Department must be informed of the actual date the filed changes will be used by the insurer(s).

(E) When an insurer or other filer submits a rule, policy or form filing, the transmittal letter therefor (or a separate filing memorandum) shall state how the rule, policy or form will be used; such as: optional at the request of the insured, optional at the discretion of the insurer, or obligatory for all eligible insureds. Should the insurer or other filer subsequently wish to change the application and/or use of the rule, policy or form, a new filing, describing the change in the application and/or use of same, must be submitted.

(F) All filed changes must specify the contemplated effective dates therefor; which may be either thirty (30) days after the date it is received by the Department or a date subsequent thereto.

(G) Any employee of an insurer may submit a filing on its behalf, provided that the filing is described upon the insurer's official stationery. Filings, other than "Consent to Rate" filings, which are submitted on behalf of an insurer by any other person or organization will be accepted only if the Department has on file a currently effective authorization for same which is signed by an officer of the insurer. Such an authorization must clearly indicate the extent of the filing agent's authority to act on behalf of the insurer. Unless the authorization contains an expiration date, it will be considered valid until withdrawn in writing by an officer of the insurer. Any agent or employee submitting "Consent to Rate" type filings on

behalf of the insurer will be considered to have the authority to do so. It is not necessary for an insurer to file a letter of authority on behalf of an agent with respect to submissions of "Consent to Rate" filings.

(H) Each policy, form and/or endorsement filing submission shall be accompanied by a completed copy of the "Form Filing Summary Sheet", F 103, attached hereunder. However, if the filing contains more than one policy, form or endorsement, or revision thereof, a narrative summary sheet may be completed describing and detailing each element of the filed changes; provided that the narrative includes at least all the information elicited by the "Form Filing Summary Sheet" (F 103).

(I) Each rate or rule filing submission shall be accompanied by a completed copy of the "Rate or Rule Filing Summary Sheet", F 104, attached hereunder. If the filing contains more than one rule or kind of rate, or revision thereof, a narrative summary sheet may be completed describing each element of the filed changes provided that it contains at least all the information elicited by the "Rate or Rule Filing Summary Sheet" (F 104).

(J) Each property or casualty rate filing submission proposing to effect a total annual increase of $50,000 or more in premium income, in the State of Vermont, must be accompanied by a completed copy of the "Supplemental Rate Filing Information Form", F 105, attached hereunder. Furthermore, a completed copy of this Supplemental Form (F 105) must accompany each Private Passenger Automobile Insurance rate filing submission,

regardless of its proposed economic impact. This requirement shall not apply to any line of insurance not listed on the first page of Form F 105, attached to this regulation.

(K) Each filing of a revised rule(s), policy(ies) or form(s) which replace an existing edition shall [bracket] the words to be deleted and underline the words that are being proposed. If an entire paragraph, page, form or policy is proposed to be changed, both the present and the proposed matter must be displayed in a side-by-side comparison. In every instance, the filing must fully describe the intent and every reasonably anticipated effect of the revised rule(s), policy(ies), or form(s) for the State of Vermont.

(L) No policy, form or endorsement filing submission shall include any condition, clause or provision which is contrary to Vermont statute or has otherwise been held to be contrary to law or invalid in the State of Vermont; unless same is specifically and prominently described as such within the filing and the final printed version of the policy, form or endorsement.

(M) All filings of proposed rate, rule, policy or form changes must be submitted in an easily readable condition. Printer's proofs, typewritten or photostatic copies, or other legible copy is permitted. It is not necessary to file final printed copies of rule(s), rate(s) or form(s), if the content of the actual final printed copies is identical with the content of the original copies filed, unless specifically requested by the Department.

(N) Any insurer doing business as a member of an underwriting group or association, and using special rules, rates, policies and/or forms which differ from the

rules, rates, policies and forms it would otherwise use to insure the same class or type of risk (when not participating as a member in the underwriting group or association), must file such special rules, rates, policies and forms with the Department, or designate an authorized agent to file same on its behalf. These special rules, rates, policies and forms may only be used when insuring risks through or with the underwriting group or association.

(O) Title 8, Section 3367 (entitled "Retaliatory Provisions") of the Vermont Statutes requires the Department to collect rate, rule, and/or policy or form filing fees from foreign or alien insurers, if the state or country in which they are domiciled imposes such (and larger) fees upon Vermont's domestic insurers. Accordingly, each domestic insurer of any other state or jurisdiction which requires such fees shall likewise remit a like filing fee (in the form of a check made payable to the Vermont Department of Banking and Insurance) together with each original filing submitted. The insurer shall also represent and certify that the fee payment remitted is the same amount required by its domiciliary state or jurisdiction.

The filing may not become effective until the fee is received by the Department.

(P) Where, in the determination of the Commissioner, a filing does not include sufficient statistical or classification loss and expense experience data base to allow for the establishment of a rate(s), form(s), or rule(s), which is just, reasonable and adequate, the Commissioner may require the filer to supplement its filing with the loss and expense experience data of other insurers. Such other insurers shall provide the requested

data to the Department in the form and manner prescribed by the Commissioner.

Section VII – Deviations from Rates, Rating Plans or Rating Schedules of a Rating Organization

An insurer must support any deviation from the rates, rating plans and rating schedules filed by a rating organization by the submission of a filing which statistically documents or otherwise justifies the variation from the rating organization's filings. Such a deviation shall apply indefinitely, unless there is a pre-established termination date specified in the insurer's filings; or until it is replaced or withdrawn.

The term "deviation" does not apply to policy form or non-rating rule filings. An insurer shall not use the term "deviation" in a filing submission unless it has authorized a rating organization to submit filings of rates, rating plans or rating schedules on its behalf; and it is actually deviating from said rates, rating plans or rating schedules.

Section VIII – Exceptions to Rating Organization Submissions

An insurer who has authorized a rating organization to submit rate, rule, policy and/or form filings on its behalf may submit exceptions to that filing authorization for Departmental consideration in connection with any insurance program, rule, rate(s), policy, form and/or line of insurance, or combination of any of these. The insurer may not use the insurance program, rule, rate(s), policy

or form which was filed by the rating organization in its behalf, on and after the effective date of its exception filing. Consequently, all subsequent revisions to the excepted rule, rate(s), etc., which are submitted by the rating organization, will not apply on behalf of such an insurer.

Such an exception filing applies indefinitely, unless there is a pre-established termination date specified in the filing; or until it is replaced or withdrawn.

Section IX – Reference Filing Submissions

An insurer who has not authorized a rating organization to submit filings on its behalf may propose to use the filed rates, rules and forms thereof by reference filing(s). This reference procedure does not require such an insurer to file with this Department the actual rate(s), rule(s), policy(ies) and/or form(s) being referenced.

Such a referenced filing procedure shall only be applied to the rate(s), rule(s), policy(ies) or form(s) submissions in effect at the time of the actual reference filing; and in no event may such a reference filing apply to any future filings of changes in rates or rules which are submitted by the rating organization. A new reference filing must be made in order to lawfully use any referenced rule(s) or rate(s) which has subsequently been revised. Any insurer submitting a policy(ies) or form(s) reference filing may, if so described therein, automatically reference future rating organization changes or revisions to the policy(ies) or form(s) being referenced. Such a filing should clearly indicate that this is the insurer's intent.

A reference filing is considered to be an independent filing, except as noted herein. Reference filings are not permitted if the rules and/or rates being referenced were filed by a rating organization, unless the insurer also reports its classified statistics in a form and manner acceptable to the Commissioner.

Any insurer which has submitted rate and/or rule reference filings prior to April 20, 1982 under which its reference filing automatically applies for, or to, changes or revisions in the underlying referenced filing, shall resubmit the reference filing in accordance herewith as soon as possible (no later than September 1, 1982).

All that is needed for a reference filing is an official letter (and copy thereof) from the insurer (together with a postage paid self-addressed return envelope) containing a clear and precise statement therein describing the rule(s), rate(s), policy(ies), form(s), programs, etc., that are being adopted by reference by the insurer, including its justification for adopting same.

Such reference filings may be submitted without including copies of the actual referenced materials (or Forms F 103, F 104, or F 105, or a narrative summary).

Section X – Simplification, Delineation and Explanation Procedures for Filing Submission

Each filing submission, regardless of its type, content or proposed affect, shall be expressed in a language and mathematical form which is reasonably understandable. Every element or procedure contained in the filing shall be completely, clearly, and conspicuously explained. This

requirement applies to each assumption, underlying theory, equation, mathematical or actuarial formula, determination, calculation or criterion, and every other empirical or judgmental determination or premise embraced within the filing submission.

Recognizing the possible additional informational content resulting from each filer's compliance with this requirement (for each and every filing submission), it is permissible for the filer to compile under a separate and single loose-leaf publication all such information, in the form and substance described above, as is common to the various filings that it submits to this Department. Such a compilation will be retained in the Department's offices and must be updated concurrently with the individual filing submissions of the filer, as its filing actions so dictate. Three copies of each such compilation, and all updates thereto, must be filed with this Department.

Section XI – Exceptions to this Regulation

(A) It is not necessary to submit rates, rules, policy(ies) or forms filings to the Department under the following circumstances:

1. If the property and casualty insurance premiums for and individual insured, exclusive of worker's compensation insurance, is in excess of $100,000 per year. This exception does not apply to group policies, mass merchandising groups, safety groups, or similar group insurance arrangements.

2. If the policy is issued subject to a deductible of $100,000 or more per year; which is not

insured separately and which amount is self-insured or retained by the insured. This exception does not include any group policy, safety group policy, mass merchandising group, or similar group insurance arrangement, or any worker's compensation policy.

3. If the only change(s) on a policy, form or endorsement is its title, reference number and/or edition date. The insurer shall maintain a list of its policy, form and endorsement reference numbers and edition dates in its offices. The list should contain all replaced reference numbers and edition dates, together with the current number and edition date and a brief description of the policy, form or endorsement.

4. If the only change involves the size or color of the manual page(s) or policy, form or endorsement; or the size of type (providing the minimum size of the type shall be at least 10-point type).

5. If the policy, form, endorsement, rate or rule change(s) consists of transposing or relocating text from one location or position therein to another; providing that the established substance or meaning has not been affected by the change.

6. If the only change in the policy, form, or endorsement is the method of reprinting or reproducing same; or only involves changing the "jacket" of the policy (e.g. placing pictures or logos on the policy "jacket"), changing the shape of a policy, form or endorsement or changing the names of authorized signatures on the policy.

7. For any combination of changes outlined in paragraphs 3 through 6.

8. Policy forms covering unique or unusual risks or exposures. Examples of an unusual risk would be: nuclear power plants, space satellites or a suspension bridge. Example of an unusual exposure would be strike insurance or the exposure of a firm offering the services of professional divers, or stunt men. It is not appropriate to list all unique or unusual exposures and the listed risks and exposures are given by way of examples.

9. Coverage on risks and exposures usually considered to be wet marine.

10. Policies covering specially rated inland marine risks. Specially rated means unique or one of a kind policy(ies).

11. Renewal certificates providing that coverage has not changed. If any change is made to the renewal certificate which broadens or restricts coverage, it must have been filed.

(B) It is not necessary to file with the Department, the particular exceptions listed in a title insurance policy by an insurer, if the exposures or defects being excepted were discovered by an insurer after inspection of the title, and it determined that they were uninsurable at the filed rate; or unless special requirements would have to be imposed in order to insure such exposures or defects.

However, it is necessary to file the standard or common exceptions and exclusions included in the majority of title policies issued by a title insurer covering titles in

Vermont. These exceptions and exclusions shall be preprinted in the policy (or an endorsement) and are subject to the usual filing requirements.

Section XII – Rating Organization Filing Submission

An insurer who has authorized a rating organization to submit rule(s), rate(s), policy(ies) and form(s) filings on its behalf may establish its own effective date for its adoption and use of a rating organization filing submission, for up to six months from the effective date otherwise established for the filing, without prior approval from this Department. The Department must be so notified for informational purposes only. The insurer must forward an official notification letter (one copy for each affected company within an insurer group) and a postage paid self-addressed return envelope. The Department will return a copy of the letter stamped "Received".

Any insurer not electing to adopt a rating organization filing shall be considered as having adopted an independent filing on its own; and is, thereafter, individually subject to Vermont's statutory and regulatory filing requirements. Furthermore, such an insurer must inform the Department in writing that its filing authorization with the rating organization has been so changed.

Section XIII – Severability

If any section of this regulation, or the application thereof to any person or situation, is held to be invalid,

the remainder of this regulation shall not be effected hereby.

/s/ George A Chaffee
GEORGE A. CHAFFEE
COMMISSIONER OF BANKING AND INSURANCE

F 103 9/81

VERMONT DEPARTMENT OF INSURANCE

Form Submission – Summary Sheet

Required Filing Information

Date of Filing: _____

Insurance Company or
Rating Organization: _____

Form No./Ed. Date: [ ] New [ ] Revision [ ] Edition No. _____

Attaches to: _____
(Type of policy or coverage part)

Presently filed rates and rules are to be used with this form filing?

[ ] Yes [ ] No (Explain) _____

_____

Please describe/respond: _____

_____

Purpose and Use of Form? _____

Is it Mandatory or Optional? (Explain) _____

_____

Broadens Coverage? (Explain) _____

Restricts Coverage? (Explain) _____

Revision of: _____

(if form is different from the immediate previous edition, explain the difference in detail – attach additional sheets as needed)

_____

_____

Company – Please complete the required number of copies of this form. Two completed copies must accompany every policy, form or endorsement filing made with the Vermont Insurance Department.

_____

FOR DEPARTMENTAL USE ONLY – DO *NOT* COMPLETE

Date Filed: _____ Date Received: _____

Dept. File No. _____ Date Approved: _____

Effective Date: _____

F 104 9/81

VERMONT DEPARTMENT OF INSURANCE

Rate and/or Rule Submission – Summary Sheet

Required Filing Information

Date of Filing: _____ Proposed Eff. Dates:

(New Bus.) _____

(Renewal Bus.) _____

Insurance Company or
Rating Organization: _____

Identification: _____
(Filing Number and Description of Change)

Attach Supplement Form F 105 furnishing detailed information as required by Vermont Filing Regulation.

Overall Premium % Changes: Increase ; Decrease ; Other_____

Policy(ies), Form(s) and/or Endorsement(s) to be used in conjunction with this filing: [ ] As previously filed; [ ] Other (Describe): _____

_____

Estimated % or number of Vermont policy holders affected _____%

Estimated $ premium impact for Vermont _____.

Company – Please complete the required number of copies of this form. Two completed copies must accompany every rate and or rule filing made with the Vermont Insurance Department.

FOR DEPARTMENTAL USE ONLY – DO *NOT* COMPLETE

Date Filed: _____ Date Received: _____

Dept. File No. _____ Date Approved: _____

Effective Date: _____

F 104 9/81

Form F 105

This form is required by Regulation 81-3, Section VI(J). Use this form for the following lines:

Private Passenger Automobile Liability
Private Passenger Automobile Physical Damage
Commercial Automobile Liability
Commercial Automobile Physical Damage
Homeowners Multiple Line
Farmowners Multiple Line
Commercial Multiple Line
Commercial Fire and Allied Lines
Liability Other than Automobile

F 105 9/81

STATE OF VERMONT
RATE FILING GENERAL INFORMATION

1. Date Filed: _____ Proposed Effective Date: _____
2. a) Company name (or companies) _____
   b) Group name (if applicable) _____
3. a) Line(s), Sub-line(s) affected _____ Policy term: _____
   b) Annual Statement Line of Business _____
   c) Earned premium (latest year available) for:

	Vermont	Countrywide
3(a)		
3(b)		

4. a) If affiliated with a rating organization for Vermont business, list name: _____
   b) Affiliation Status for 4(a): _____
5. Estimated premium effect of this filing by sub-line:

Coverage	Written Premium*	% Change Requested	Annual Premium Change

*Use EXP if W/P is not available

6. Components of rate level change(s):

Coverage	Proposed Rate Level Change(s)	Indicated Rate Level Change(s)	Rate Level Change Components* (a) Rate Change	(b) _____	(c) _____	(d) _____

*Describe components: of proposed change, e.g. class changes, increased limits changes, deductibles, age and symbols, policy coverage, rules, etc.

7. List rate level changes for last five (5) years for line(s) of business affected by this filing:

Individual Coverage	Effective Date	% Change	Description of Change

8. Number of Vermont policies or (exposure units) written in each of last five (5) years:

	Estimated # of Policies*	% Change
5th Prior Year 19__		
4th Prior Year 19__		
3rd Prior Year 19__		
2nd Prior Year 19__		
1st Prior Year 19__		

*If the number of policies is not available, use the number of exposure units. Example: Private Passenger Automobile – Car Years, Homeowners House Years.

9. Annual Statement Experience: Page 14 information for line(s) impacted by this filing.*

	Vermont				Countrywide			
	Earned Premium	Incurred Losses	Change in IBNR**	Loss Ratio	Earned Premium	Incurred Losses	Change in IBNR	Loss Ratio
5th Prior Year 19__								
4th Prior Year 19__								
3rd Prior Year 19__								
2nd Prior Year 19__								
1st Prior Year 19__								
Months 19__								

*If a rating organization cannot obtain all the data from all its members, please complete paragraph 9 with the data available, and submit a list of companies whose data is not included.

**This column does not have to be completed by rating organizations.

10. Insurance Expense Exhibit Part II incurred Ratios (%) for the Line of Business in (9) above:

	Percentage Annual					
	19__	19__	19__	19__	19__	Budget*
(a) Line 5 – Loss Adjustment Expense						
(b) Line 19 – Comm. & Brokerage						
(c) Line 20 – Other Acquisition						
(d) Line 21 – General						
(e) Line 22 – Taxes, etc.						
(f) SUBTOTAL (sum (a)-(e))						
(g) Vermont Loss Ratio (Ques. (9))						
(h) Combined Ratio (f) & (g)						
(i) Line 13 – Net Investment Gain/Loss						

*If included as percentage to vary premium.

11. Rating organizations should complete paragraphs (9) and (10) by using data from only those members and subscribers who have authorized them to file rates in Vermont.

DEFENDANT'S EXHIBIT KK

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we," "us" and "our" refer to the company providing this insurance

The word "insured" means any person or organization qualifying as such under WHO IS AN INSURED (SECTION II).

Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (SECTION V).

SECTION I – COVERAGES

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement.

    a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages. We may

at our discretion investigate any "occurrence" and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and

(2) Our right and duty to defend and when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS – COVERAGES A AND B.

b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory;" and

(2) the "bodily injury" or "property damage" occurs during the policy period.

c. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury."

2. Exclusions.

This insurance does not apply to:

a. "Bodily injury" or "property damage" expected or intended from the standpoint of

the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. "Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages.

(1) Assumed in a contract or agreement that is an "insured contract," provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or

(2) That the insured would have in the absence of the contract or agreement.

c. "Bodily injury" or "property damage" for which any insured may be held liable by reason of:

(1) Causing or contributing to the intoxication of any person;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you:

(1) Manufacture, sell or distribute alcoholic beverages;

(2) Serve or furnish alcoholic beverages for a charge whether or not such activity:

(a) requires a license;

(b) is for the purpose of financial gain or livelihood; or

(3) Serve or furnish alcoholic beverages without a charge, if a license is required for such activity.

d. Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. "Bodily injury" to:

(1) An employee of the insured arising out of and in the course of employment by the insured; or

(2) The spouse, child, parent, brother or sister of that employee as a consequence of (1) above.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract."

f. (1) "Bodily injury" or "property damage" arising out of the actual alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to any insured;

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible, or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:

(i) if the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor, or

(ii) if the operations are to test for monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraphs (a) and (d)(i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

(2) Any loss, cost or expense arising out of any:

(a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed

g. "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use

includes operation and "loading or unloading."

This exclusion does not apply to:

(1) A watercraft while ashore on premises you own or rent;

(2) A watercraft you do not own that is:

(a) Less than 26 feet long; and

(b) Not being used to carry persons or property for a charge;

(3) Parking an "auto" on, or on the ways next to, premises you own or rent provided the "auto" is not owned by or rented or loaned to you or the insured;

(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in paragraph f.(2) or f.(3) of the definition of "mobile equipment" (Section V8).

h. "Bodily injury" or "property damage" arising out of.

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

(2) The use of "mobile equipment" in, or while in practice or preparation for, a prearranged racing, speed or demolition contest or in any stunting activity.

i. "Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

j. "Property damage" to:

(1) Property you own, rent, or occupy;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (5) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard."

k. "Property damage" to "your product" arising out of it or any part of it.

l. "Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard."

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. "Property damage" to "impaired property" or property that has not been physically injured arising out of:

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work;" or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

(1) "Your product;"

(2) "Your work;" or

(3) "Impaired property;"

If such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. "Bodily injury" arising out of any:

(1) Refusal to employ;

(2) Termination of employment;

(3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions; or

(4) Consequential "bodily injury" as a result of (1) through (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or to repay someone else who must pay damages because of the injury.

Exclusions c through n do not apply to damage by fire to premises rented to you. A separate limit of insurance applies to this coverage as described in LIMITS OF INSURANCE (SECTION III).

COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement.

   a. We will pay those sums that the insured becomes legally obligated to pay at damages because of "personal injury" or "advertising injury" to which this coverage part applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

      (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and

      (2) Our right and duty to defend and when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverage A or B or medical expenses under Coverage C.

      No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS – COVERAGES A AND B.

   b. This insurance applies to:

      (1) "Personal injury" caused by an offense arising out of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you:

      (2) "Advertising injury" caused by an offense committed in the course of advertising your goods, products or services,

but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions.

This insurance does not apply to

a. "Personal injury" or "advertising injury"

(1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity

(2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

(3) Arising out of the willful violation of a penal statute or ordinance committed by, or with the consent of the insured or

(4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

b. "Advertising injury" arising out of:

(1) Breach of contract, other than misappropriation of advertising ideas under an implied contract;

(2) The failure of goods, products or services to conform with advertised quality or performance.

(3) The wrong description of the price of goods, products or services, or

(4) An offense committed by an insured whose business is advertising, broadcasting, publishing or telecasting.

c. "Personal injury" arising out of any:

(1) Refusal to employ;

(2) Termination of employment;

(3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions; or

(4) Consequential "personal injury" as a result of (1) through (3) above.

COVERAGE C. MEDICAL PAYMENTS

1. Insuring Agreement.

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

(1) On premises you own or rent;

(2) On ways next to premises you own or rent; or

(3) Because of your operations; provided that:

(1) The accident takes place in the "coverage territory" and during the policy period;

(2) The expenses are incurred and reported to us within one year of the date of the accident, and

(3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

(1) First aid at the time of an accident;

(2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and

(3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions.

We will not pay expenses for "bodily injury"

a. To any insured.

b. To a person hired to do work for or on behalf of any insured or a tenant of any insured

c. To a person injured on that part of premises you own or rent that the person normally occupies.

d. To a person, whether or not an employee of any insured, if benefits for the "bodily injury" are payable or must be provided under a worker's compensation or disability benefits law or a similar law.

e. To a person injured while taking part in athletics.

f. Including within the "products-completed operations hazard."

g. Excluded under Coverage A.

h. Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

SUPPLEMENTARY PAYMENTS-COVERAGES A AND B

We will pay, with respect to any claim or "suit" we defend:

1. All expenses we incur.

2. Up to $250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

3. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.

4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to $100 a day because of time off from work.

5. All costs taxed against the insured in the "suit."

6. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

   a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

   b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

   c. An organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

2. Each of the following is also an insured:

   a. Your employees, other than your executive officers, but only for acts within the scope of their employment by you. However, no employee is an insured for:

      (1) "Bodily injury" or "personal injury" to you or to a co-employee while in the course of his or her employment, or the spouse, child, parent, brother or sister of that co-employee as a consequence of such "bodily injury" or "personal injury" or for any obligation to share damages with or repay someone else who must pay damages because of the injury; or

      (2) "Bodily injury" or "personal injury" arising out of his or her providing or failing to provide professional health care services, or

(3) "Property damage" to property owned or occupied by or rented or loaned to that employee, any of your other employees, or any of your partners or members (if you are a partnership or joint venture).

b. Any person (other than your employee), or any organization while acting as your real estate manager.

c. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property, and

(2) Until your legal representative has been appointed.

d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to

a. "Bodily injury" to a co-employee of the person driving the equipment; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the

employer of any person who is an insured under this provision.

4. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

   a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

   b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

   c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

   a. Insureds;

   b. Claims made or "suits" brought; or

   c. Persons or organizations making claims or bringing "suits."

2. The General Aggregate Limit is the most we will pay for the sum of

   a. Medical expenses under Coverage C;

   b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard," and

   c. Damages under Coverage B.

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard."

4. Subject to 2 above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal injury" and all "advertising injury" sustained by any one person or organization.

5. Subject to 2 or 3, above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

   a. Damages under Coverage A; and

   b. Medical expenses under Coverage C

   because of all "bodily injury" and "property damage" arising out of any one "occurrence."

6. Subject to 5, above, the Fire Damage Limit is the most we will pay under Coverage A for damages because of "property damage" to premises rented to you arising out of any one fire.

7. Subject to 5, above, the Medical Expense Limit is the most we will pay under Coverage C for all medical

expenses because of "bodily injury" sustained by any one person.

The limits of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy.

   Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Claim Or Suit.

   a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

      (1) How, when and where the "occurrence" or offense took place;

      (2) The names and addresses of any injured persons and witnesses; and

      (3) The nature and location of any injury or damage arising out of the "occurrence" or offense

   b. If a claim is made or "suit" is brought against any insured, you must:

(1) Immediately record the specifics of the claim or "suit" and the date received, and

(2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit;"

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation, settlement or defense of the claim "suit;" and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us.

No person or organization has a right under this Coverage Part:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an

insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance.

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This Insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

(1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work;"

(2) That is Fire insurance for premises rented to you; or

(3) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Coverage A (Section I).

When this insurance is excess, we will have no duty under Coverage A or B to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit.

   a. We will compute all premiums for this Coverage Part in accordance with our rules and rate.

   b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured.

   c. The first Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request.

6. Representations.

   By accepting this policy, you agree:

   a. The statements in the Declarations are accurate and complete;

   b. Those statements are based upon representations you made to us; and

   c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds.

   Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

   a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us.

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew.

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Advertising injury" means injury arising out of one or more of the following offenses

a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

b. Oral or written publication of material that violates a person's right of privacy;

c. Misappropriation of advertising ideas or style of doing business; or

d. Infringement of copyright, title or slogan.

2. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including

any attached machinery or equipment. But "auto" does not include "mobile equipment."

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

   a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

   b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or

   c. All parts of the world if:

      (1) The injury or damage arises out of:

         (a) Goods or products made or sold by you in the territory described in a. above; or

         (b) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; and

      (2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.

5. "Impaired property" means tangible property, other than "your product" or "your work" that cannot be used or is less useful because:

   a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous, or

   b. You have failed to fulfill the terms of a contract or agreement.

if such property can be restored to use by:

a. The repair, replacement, adjustment or removal of "your product" or "your work;" or

b. Your fulfilling the terms of the contract or agreement.

6. "Insured contract" means:

a. lease of premises;

b. A sidetrack agreement.

c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad:

d. An obligation as required by ordinance to indemnify a municipality, except in connection with work for a municipality;

e. An elevator maintenance agreement.

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

An "insured contract" does not include that part of any contract or agreement:

a. That indemnifies any person or organization for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;

b. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(1) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or

(2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

c. Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in b. above and supervisory inspection or engineering services; or

d. That indemnifies any person or organization for damage by fire to premises rented or loaned to you.

7. "Loading or unloading" means the handling of property:

a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto."

b. While it is in or on an aircraft, watercraft or "auto;" or

c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto"

8. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

   a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

   b. Vehicles maintained for use solely on or next to premises you own or rent;

   c. Vehicles that travel on crawler treads;

   d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

      (1) Power cranes, shovels, loaders, diggers or drills, or

      (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

   e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

      (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

      (2) Cherry pickers and similar devices used to raise or lower workers;

   f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

   However, self-propelled vehicles with the following types of permanently attached equipment are

not "mobile equipment" but will be considered "autos:"

(1) Equipment designed primarily for:

(a) Snow removal;

(b) Road maintenance but not construction or resurfacing;

(c) Street Cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including straying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

9. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

10. "Personal injury" means injury, other than "bodily injury," arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment.

b. Malicious prosecution.

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;

d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or

e. Oral or written publication of material that violates a person's right of privacy.

11. a. "Products-completed operations hazard" includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned.

b. "Your work" will be deemed completed at the earliest of the following times:

(1) When all of the work called for in your contract has been completed.

(2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.

(3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

c. This hazard does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the "loading or unloading" of it;

(2) The existence of tools, uninstalled equipment or abandoned or unused materials;

(3) Products or operations for which the classification in this Coverage Part or in our manual of rules includes products or completed operations.

12. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss shall be deemed to occur at the time of the "occurrence" that caused it.

13. "Suit" means a civil proceeding in which damage because of "bodily injury," "property damage," "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

14. "Your product" means:

a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(1) You;

(2) Others trading under your name, or

(3) A person or organization whose business or assets you have acquired, and

b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

"Your product" includes:

a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product," and

b. The providing of or failure to provide warnings or instructions

"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

15. "Your work" means:

a. Work or operations performed by you or on your behalf; and

b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work;" and

b. The providing of or failure to provide warnings or instructions.

* * *

[p. 27] PAUL A. CANDAGE,

being first duly sworn by the Courtroom Deputy, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. McANDREW:

Q Will you state your name, please?

A Paul Candage.

Q And how are you employed, Mr. Candage?

A I am an insurance analyst with the Department of Banking and Insurance.

Q How long have you been an insurance analyst with the department?

A Ten years next month.

[p. 28] Q Did you have some prior insurance experience before you came to the Vermont Department?

A Yes, I did.

Q Where was that?

A I was an insurance adjuster for ten years, between 1961 – well, nine years – 1961 to 1980. That's 1970.

Q That sounds like more than nine years to me.

A Nine and a half actually.

Q From 1970 to 1980, and then you came to the department?

A No, then I – I was with the Department of Labor and Industries for ten years.

Q That was prior to being an insurance adjuster?

A No. The insurance adjuster was first. The Department of Labor and Industry was next, and in 1980 I came with the Department of Banking and Insurance.

Q Okay. Does your job as an insurance analyst at the department require you to examine forms and rates and rules filed by insurance companies?

A Yes, it does.

Q And then do you also either approve or disapprove of these various filings?

A Yes.

Q Has that been your job all along?

A Yes, it has.

* * *

[p. 37] Q Did you or any member of the department, to your knowledge, ever send a generalized notice to insurance carriers with respect to what your department's position was on the pollution exclusion?

A Not to my knowledge.

Q Have you had an opportunity in the last several weeks or months or even years in connection with several of these [p. 38] pending cases to go back through the department's files and see what you can come up with with respect to the pollution exclusion question?

A To review previously handled fillings? Looking for this?

Q No, I didn't mean individual filings. I meant department files that would contain any notices or memoranda or internal writings that related to this general question of the pollution exclusion.

A Yes.

* * *

[p. 39] Q Was there anything in any of those filings that – I'm sorry, in any of those files, that indicated that anything went out generally to insurance companies licensed to do business in Vermont?

A No.

Q Now, you heard Mr. Prindiville testify that there was no rule-making procedure or official adoption of a regulation according to the Administrative Procedures Act on this question, did you not?

A The question is did I hear that?

Q Yes. Did you hear Mr. Prindiville testify to that?

A Yes.

Q And do you agree with him that there was no rule-making procedure or adoption of a regulation pursuant to the APA?

A There was none, to my knowledge.

* * *

[p. 42] Q Have you seen anything in the files to indicate that the department of insurance issued any rule

or notice or memorandum that this policy was to become a policy of the Department of Banking and Insurance?

A Have I seen anything written?

Q Yes.

A No.

Q When you examined insurance policy forms between the time you began in approximately 1980 until, say, 1985, did you think you had authority to disapprove a policy containing a pollution exclusion on the grounds that the department did not approve of pollution exclusions?

A Yes.

Q And when you returned such a form to an insurance company saying that you were disapproving of it, did you cite any [p. 43] statute or did you state that the filing was misleading or in violation of the rate requirements or ambiguous or did you just say that you didn't allow pollution exclusions?

A I think sometime I may have indicated some or all of those things, depending upon how the pollution exclusion appeared, and whether it was merely an endorsement of a policy form. If it were – the most basic of the objection would be simply that it was not departmental policy to allow it.

Q That we don't approve the pollution exclusions?

A Yes. But back in those times we also had rate control, and it was the department position that a reduction in coverage was a de facto increase in rate, and that

we required justification of all rate increases. Statistical justification, that is, experience as to losses and claims paid.

Q In January 1983, when you agreed that ISO could delete the pollution coverage and provide pollution coverage on a separate policy form, you have already told me that that would result in a rate increase to the customer, would it not?

A Yes.

Q Did you require ISO to justify that rate increase at the time?

A I didn't personally and I don't know – I don't know what was done there.

* * *

[p. 46] THE COURT: I'm not either. But I think the question is clear enough. The witness can deal with that. We'll overrule your objection.

A Would you please repeat the question.

Q Yes. Did you at any time you dealt with the – I'm sorry, strike that. Did the department treat the Unicover III program as an independent filing, independent of ISO, during the period 1980 through approximately '87?

A I'm not sure what you mean by an independent filing.

Q I mean separate and distinct from ISO filings.

A It was obviously not an ISO form being used.

Q The language in fact of the Unicover policy or the structure of the Universal cover policy is quite different from ISO's policy, is it not?

A Yes.

Q And ISO's policy, for example, has – sets out with categories of coverage, coverage A and coverage B; is that correct?

A Yes.

Q And Universal's policy doesn't have any such structure? Or doesn't follow the same structure?

A It doesn't follow the same format.

Q Now, Mr. Manchester brought up, you were not directly involved in approval of the May 1980 filing of the Unicover policy, were you?

* * *

CROSS-EXAMINATION

BY MR. MANCHESTER:

[p. 88] Q Now, can you tell us whether reference to an ISO filing authorization will assist people in your department to determine whether an insurer is making an independent filing or is relying upon ISO?

* * *

A If I have the specific filing in my hand that I'm about to review, I do not go check the ISO filing authorization. I rely on the statements in their transmittal letter and any explanatory memoranda with it.

Q Do you know whether Mr. Prindiville goes back to the ISO services filing authorization form?

* * *

A In the normal course of reviewing filings, no one goes and checks the filing authorizations.

* * *

[p. 98] REDIRECT EXAMINATION

BY MS. McANDREW:

Q Is there anything in your rules of regulation which says that such a filing needs to be labeled with the particular term "independent"?

A Not that specifically at least. In the filing regulation – I'm not intimately familiar any longer with 81-3, and I think that there may be some reference to it, [p. 99] perhaps not a direct reference in one of the sections on how to make a filing.

Q All right. If there were any such requirement that it be specifically labeled "independent," that's where you would have to look for it, in 81-3?

A Yes.

Q As a matter of fact, the whole Unicover III program was treated as an independent filing, was it not?

A I don't think you can say that. Normally that's not one of the things we look for, I mean on a filing by filing basis.

Q As to whether or not it's an independent filing?

A That's right.

Q You just treat it as a filing, whether independent or not?

A Yes.

Q And then you look at the forms to see whether they comply with the statutory requirements to be not misleading and not ambiguous and so on?

A Yes.

Q And that's what you said earlier in the day, that you tried to be very careful about to go through each filing and look at each form and make sure that it complied with those statutory requirements?

A Statutory and other, departmental position, et cetera.

Q Okay. Are you familiar enough – I think I may have asked you this morning and I don't want to repeat myself, but are [p. 100] you familiar enough with the ISO general liability form that you can look at the Unicover III policy and determine that it is not in fact on ISO's form?

A You can tell very quickly that it's not in their format, at least. As far as individual coverage items go, that would take a lot more detailed examination.

Q All right. In the letter which was just admitted as Plaintiff's Exhibit 22, there's some mention there of a recognized hazard and a filing of an independent risk filing, an acknowledgment by the insured that pollution exclusion – or pollution coverage was being deleted. Do you recall that line of testimony?

A Would you say that again?

Q I'm sorry. Mr. Manchester, asked you, didn't he, about Exhibit 22, which was your letter to him, your recent letter to him, in paragraph three, and about your use of the term recognized – in situations where there's a recognized hazard, a company can submit an individual risk filing to exclude pollution coverage?

A Yes.

Q And is it your testimony that that was effective July 1, '84?

A Yes. Let me – let me expand on that a little. The provisions were there before that to making independent risk filing, for – for instance, charging higher than the filed [p. 101] rate for a particular coverage, but we started at that time accepting individual risk filings to complete the pollution coverage.

Q All right. So that if an insurer complied with your procedural requirements in submitting this form, you would permit them in cases of recognized hazard to eliminate the pollution coverage?

A Yes.

Q So it's not entirely accurate then to say that pollution exclusions were illegal in Vermont as of July 1, '84, is it?

A No, they weren't illegal.

* * *

[p. 163] MS. McANDREW: I reserve my requestions for Mr. Mason until we put on our case.

THE COURT: You have an opportunity to cross examine your own witness and you don't want to take it?

MS. McANDREW: I'm going to pass, your Honor.

THE COURT: All right.

MR. MANCHESTER: You have been given the day off, Mr. Mason.

THE COURT: You may step down.

MR. MANCHESTER: Mr. Prindiville, please.

THOMAS F. PRINDIVILE,

being first duly sworn by the Courtroom Deputy, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. MANCHESTER:

Q Good afternoon.

A Good afternoon.

Q Mr. Prindiville, do you work for the Vermont Department of Banking and Insurance?

A Yes, I do.

Q What is your educational background?

A I have a Bachelor of Arts degree from Saint Anselm's College in Manchester, New Hampshire, and I have a CPCU designation; initials stand for Charter Property and Casualty [p. 164] Underwriter.

Q How many years have you worked for the Vermont Department?

A I have worked for the Vermont Department since 1978.

Q Have you worked for other departments of insurance?

A I worked for the New Hampshire Insurance Department for about eight years prior to that time.

Q What is your present position for the Vermont Department?

A I'm the chief insurance analyst in the Vermont Department.

Q What does that involve?

A That involves the supervision of the analyst section of the insurance department. We have five form and rate analysts and two support staff.

Q Total of seven people?

A Seven people.

Q How many filings approximately do you handle a year with those seven people?

A About seven thousand four hundred filings a year.

Q Are you here by – by way of subpoena?

A Yes, I am.

* * *

[p. 133] CROSS-EXAMINATION

BY MS. McANDREW:

Q Mr. Prindiville, when an insurance company files a form with your department and you approve it, is the company thereafter entitled to rely upon your approval and use that form in the state of Vermont?

A Yes.

Q And that approval is good until it's withdrawn, is it?

A Yes.

Q Are there procedures set out in the statute for withdrawing approval of a policy?

A There are.

Q What section do those appear in? 3542?

A 3541.

Q 41?

A 541.

Q And those procedures provide for what, notification of the company of the department's intention to withdraw its prior approval?

A That's correct.

Q Without that notification, would there be any other way of the department – or company knowing that you had withdrawn your approval of their policy?

[p. 134] A No other way.

Q Now, there's been some testimony here that in 1980, Universal's Unicover III policy was approved by your department; is that correct?

A That's correct.

Q And in that policy, there were apparently some exclusions with respect to pollution, including petroleum contamination of a body of water; is that correct?

A That's correct.

Q And that policy was approved by your department?

A Correct.

Q Was that approval ever withdrawn?

A No.

Q The statutory procedures were never filed – or followed for notifying Universal that your prior approval had been withdrawn?

A That's correct.

Q Had you followed those procedures and notified Universal of your intent to withdraw your prior approval, would Universal have been entitled to a hearing on that question?

A Yes.

Q But none of those procedures were ever undertaken, were they?

A They were not.

Q Yesterday in response to some questions from Mr. [p. 135] Manchester, you indicated – I believe he asked

you as to what you considered was your authority or the source of your authority for implementing this policy that you wouldn't approve of pollution exclusion. Do you recall that line of questioning?

A Yes.

Q And I think you testified in response that you relied on the unfair trade practices section of the statutes?

A I don't believe it was phrased in that way. Initially I testified that when the decision had been made by the Vermont Department, I was not an employee of the Vermont Department. And when I started to work for the Vermont Department, I was carrying out the policy that had been established by the department.

Q Had that policy been established in writing somewhere?

A I never found any – anything in writing to establish that policy.

Q Was there ever any rule-making procedure or other procedure under the Administrative Procedures Act which enacted that policy?

A I'm not aware of any.

Q Are you aware that any insurance companies or consumers were ever given an opportunity to comment on that policy or have any input with respect to it?

A I wasn't working with the department so I can't answer [p. 136] your question.

Q Well, did you ever become aware of any such –

A I never became aware of any such procedure.

Q Looking at section 3542 of the statutes of Title 8, does that statute set forth some grounds for disapproval of an insurance policy?

A Yes.

Q Disapproval by your department?

A Yes.

Q All right. Was your determination to disapprove the pollution exclusion somehow governed by that section?

A Pardon me? Could you repeat that question?

Q Yes. Was your determination to deny approval for pollution exclusions governed by that section?

A We never had to – to make that decision. I conveyed to the Insurance Service Office the department's intention to withdraw approval. Because we were able to reach an agreement with them, we never had to go through the formal process of withdrawing approval or citing various reasons for the withdrawal of the approval.

Q Well, I was talking about somewhat earlier. I was talking about during the 1970s when you indicated that you would not – not approve a form of policy which had a pollution exclusion in it, and I'm wondering if there's something in section 3542 that formed the basis for your authority to do [p. 137] that.

A Well, I wasn't working with the Vermont Department during the '70s. I came to work in 1978. I don't know how I can answer that question.

Q Do you recall being asked on any prior occasions about your source of authority for implementing this – or the department's source of authority for implementing this policy that pollution exclusions would not be approved?

A I believe the line of questioning dealt with our authority in general, and it was not specifically tied to the pollution exclusion.

Q You talking about in another case or in this case?

A I'm talking about in this case. I think Mr. Manchester was just citing our authority in general, but was not citing our authority to approve or disapprove a specific exclusion or a specific filing. I think that's like hypothetical. It's what – what we might do if something happens.

Q All right. Let's talk specifically about what you have referred to as a policy within the Department of Banking and Insurance not to approve a pollution exclusion in an insurance policy. You indicated that this policy was in place in the 1970s when you got to the department?

A Correct.

Q And I am – I want to inquire into what you understood was the source of the authority of the department to implement [p. 138] such a policy.

A I never had to – I was never really faced with that question, because it was my recollection that the insurance companies were complying with that procedure, and not one of them challenged us on that point or – that I can remember, in the early part of the – my employment with

the department, ever even requested a pollution exclusion.

Q Well, there are some – there are some correspondence in your file at various times between the 1970s -- mid 1970s and the mid 1980s to a variety of insurance companies indicating to them that you did not generally approve pollution exclusions; is that correct?

A Yes.

Q And since you have already testified that there wasn't any regulation or duly adopted rule which provided for such a policy, that this was something that the department did on its own; is that correct?

A I can't say there was no regulation. I was not here at the time. It's my understanding that there was not. I never saw any.

Q Have you ever seen any such regulation?

A I never saw any.

Q And therefore, I'm asking you what your understanding was as to the source of the department's authority to implement such a policy.

[p. 139] A I'm having a problem answering that question because it appears to me to be a hypothetical question, and you appear to be asking me what the department did, and I can't put myself in the place of the department during the early 1970s. I was simply not here.

Q All right.

A And I just – I don't know how I can answer that question.

Q All right. When you got to the department in the late '70s, did you perpetuate the requirement of the department once you moved into your job?

A Yes, I did.

Q And for what reasons did you do that?

A It was an established policy of the department.

Q Do you recall having your deposition taken on an earlier occasion in a case involving the St. Paul and the Town of Cornwall?

A Yes, I believe I do.

MS. McANDREW: Could we have this marked as whatever we're up to. HH.

Q I show you what's now been marked as Defendant's HH for identification and ask whether you can identify that as a sworn deposition that you gave in that case involving the St. Paul and the Town of Cornwall?

A Yes, it appears to be.

Q And I'd ask you to turn to page – pages 18 and 19. Well, [p. 140] beginning on page 17, I guess, do you recall being asked the question, "Do you know firsthand why the department did not like or approve of the use of these pollution exclusion in these multiperil liability policies?" Do you recall that question?

A Yes.

Q And your answer generally was that you were in New Hampshire at the time and not here. You were working in New Hampshire then so you didn't know

specifically, and then on page 18, do you recall the question, "But you did perpetuate that requirement of the department once you moved into this position; is that correct?"

A Yes.

Q And your answer was?

A "Yes."

Q All right. And then do you recall the question, "And during the course of perpetuating it, were you familiar or aware of the reasons?"

A Yes.

Q And your answer was "yes"?

A Yes.

Q And then you were asked to articulate those reasons, were you?

A Yes.

Q And then going on in the – your answer, you indicated [p. 141] that, quote, "One, I guess, was a concern for the environment in that there be some resources there to pay for cleanup"?

A Yes.

Q And then you talk a little bit more about this. Then you say, "though that was a concern over the environment. That's one concern"?

A Yes.

Q And then you talked about another concern which may have been to do with – was technical and had to do with rating?

A Yes.

Q And then you went on a little bit and at page 19, you expand a little bit more and then say that, "So I think those were the two reasons," the two you had previously talked about?

A Yes.

Q All right. Is that your – still your testimony today that that was the reason for the policy of the department, was concern for the environment, plus a rating consideration?

A I believe that was the reasons [sic] for perpetuating the policy. I can't tell you what the reason was when the policy was put in place.

Q But those were the reasons that you continued to apply it?

A That's my belief.

Q Now, are you aware that – and so – strike that. To expand on that a little bit, your concern was that [p. 142] there should be somebody who was financially responsible for cleaning up the environment and you thought that insurance companies were in a position to do that?

A In this particular instance, yes.

Q Are you aware that in some states such as New York, the regulatory authorities have determined that it's

against public policy to have insurance coverage available for pollution coverage?

A Yes.

Q And do you understand their reasoning to be that if there is available insurance coverage for pollution and environmental damage, that then the owners of the property might be less inclined to be careful about such things as gasoline and oil spills and less inclined to pay attention to keeping their property clean?

A I'm not certain of their total reasons for that action. That could be one. Another one could be a concern over solvency.

Q Were you aware that this issue was ever put to the people of the state of Vermont in the form of a rulemaking proceeding so that the people of Vermont could decide which one of those policies they might want to adopt?

A I think I answered that question, and the answer was I didn't know of any rule.

Q This was just decided informally within the Department of [p. 143] Banking and Insurance, is it?

A I wasn't here when the original policy was set up. I can't say whether it was formal or informal. When I came on board, I continued the policy that had been there. At that time we had no – we did not enact a rule but simply continued the policy that had been in place.

Q You have spoken earlier today about question of ISO filings versus independent filings on behalf of member companies, and I want to ask whether you recall

being asked some similar questions in connection with this St. Paul case, the earlier case. Do you recall some questions along those lines? And I'd ask you to refer specifically to page 40 of your earlier deposition and going onto page 41.

* * *

[p. 144] A Okay. Okay, I recall that.

Q And you – do you recall offering to explain that occasion something about the difference between ISO filings and other types of filings?

A Yes.

Q And the question doesn't make a great deal of sense, but you recall your answer, "I have to explain before I can answer that. I have to make a little explanation," and the question was, "Sure," and then can you tell us what your answer was?

A Do you want me to read that?

Q Yes.

A "The Insurance Service Office" –

Q Read slowly so the reporter can get your testimony, please.

A "The Insurance Service Office made filings for a number of companies, including St. Paul. Many companies, including St. Paul, also had programs or other policy forms which they filed on their own. You might call these independent forms. So the agreement with the Insurance Service Office concerning those independent forms" –

Q Let – can I interrupt you for a moment? I think you misread one line. I think you said "so the agreement with the insurance" –

A Oh, I'm sorry. "So the agreement with the insurance department concerning those independent forms would have [p. 145] governed in some cases, so we have two different set [sic] of forms. We can have one set of forms a company's issuing that's in effect Insurance Service Office forms and another set which are independent forms, forms the company themselves have drafted and the company themselves have filed with us. I think you'll find that St. Paul issued to the town an independent form, not a form drafted by the Insurance Service Office."

Q All right. And then on page – going onto the following page, you were – at the bottom of that page, do you recall being asked, "Does the department still have to approve that independent form?" And your answer was "yes"?

A Yes.

Q All right. And then do you recall being asked on page 42, "What's the basis for your believe [sic] that St. Paul used an independent form for the Town of Cornwall?"

A Yes.

Q And what was your answer on that?

A "I saw a copy of the form issued to the Town of Cornwall. I don't have it in front of me. I think you might have provided it to me, or just from reviewing it" – that doesn't make sense, does it?

A – "or someone provided it to me, if you didn't, and I could compare that with the forms issued by the Insurance Service Office or drafted by the Insurance Service Office and [p. 146] they were different. And in addition to that, I have a copy of a letter in front of me from Linda Bergseng to St. Paul" –

Q Of St. Paul?

A – "of St. Paul, referring to a simplified language modular form filing."

Q So in this earlier case when you were asked about an independent filing, you were apparently shown a copy of a form and you could determine that it was different from the ISO form and therefore it constituted and independent filing; is that correct?

A I'd have do [sic] look at the St. Paul filing. My belief is that it was clearly labeled an independent form, and also the St. Paul authorization had clearly specified that this program was an independent form.

Q Is there anything in your answer, in this earlier answer, as to what was the basis for your belief that it had filed an independent form, that referred either to the St. Paul authorization or to a labeling that it was an independent form?

A It does – I don't believe it says what I was referring to.

Q Okay. It says you could look at the language and that gave you some clue, and the other was that the letter from the person at the St. Paul referred to a simplified language, modular form, and therefore you could tell it was an [p. 147] independent filing?

A We're talking about a filing or filings, and it's not specific. It just refers to some filing or filings. We're not referring to a specific filing, so –

Q Was this earlier testimony true to the best of your knowledge and believe [sic] at the time that you gave it?

A Yes.

Q Looking at the Defendant's Exhibit A –

THE COURT: Is that A or K?

MS. McANDREW: A is the May 2nd, 1980 filing with the defendant.

* * *

[p. 148] Q Referring to the final paragraph on the first page of that letter, does Universal indicate in their cover letter that they have been working on the problems unique to motor vehicle dealers in having their claims staff collect data on the type of claims presented and so on?

A Yes.

Q And does it say, "We then had our Unicover committee concentrate for one and a half years creating an easy-to-read policy with only motor vehicle dealers in mind"?

A Yes.

Q Does that give you some indication that this policy might be somewhat different than the ISO policy?

A Yes.

Q Then going onto the third page of that letter, which is number stamped 0284, in the paragraph of text at the bottom of the page, does Universal indicate that "in order to create a product with distinctive readability and understanding, it was necessary to completely revise common insurance language"?

A I see that.

Q And they say that "due to this mass conversion from conventional to modern language, and from generalization to specialization, Unicover III is an entirely new product"?

A I see that.

[p. 149] Q That's included in the cover letter, is it?

A Yes.

Q Would that give the insurance department some indication that this was not the same as the standard ISO policy in effect at the time?

A Yes.

THE COURT: Is this a convenient breaking point here?

MS. McANDREW: Sure.

THE COURT: We'll take our afternoon recess.

* * *

[p. 153] CONTINUED CROSS-EXAMINATION

BY MS. McANDREW:

Q Mr. Prindiville, before we took a break, we were looking at Defendant's Exhibit A, which is also Plaintiff's

Exhibit 23, I believe, which was the May 2nd, 1980 Universal filing, and it – referring again to the cover letter, and now I'm referring to page two, which is the number stamped 0283, do you have that in front of you?

A What page are you referring to?

Q Page two of the cover letter.

A I see it.

Q And the second paragraph on that page that begins, "As future time permits."

A Yes.

Q You see where I'm referring?

A Um hum.

Q And did Universal tell you in that letter that "Since this filing is not a revision of the current Unicover, we wish for that policy to remain in effect"?

A Yes.

Q All right. so they made it clear in their cover letter, did they not, that this was not a revision of an earlier filing that they had made; this was a new filing?

A Yes.

[p. 154] Q And then on the final page of that cover letter, which is number stamped 0288, they indicate that "there are few areas of language change that might seem to limit standard basic coverage"; is that correct?

A Yes.

Q And there they refer to a variety of exceptions or exclusions to the policy coverage?

A Yes.

Q And under section five there, they indicate, do they not, that "both the standard language and our policy exclude BI, that's bodily injury, and PD, property damage, from the discharge or escape of petroleum into a body of water"? And then they go on to say that "standard language states that the exclusion did not apply if the escape was sudden and accidental. We wish the exclusion to apply whether accidental or not." They pointed that out to you, did they not?

A Yes.

Q And they did refer to exclusion N of the garage coverage part?

A Yes.

Q And exclusion N of the garage coverage part is the one that pertains to the escape of petroleum and petroleum substance into a body of water?

A I'd have to refer to it. If you say it is, I accept it.

Q I don't want to hold this up while we do that. And then [p. 155] in the Vermont State Amendatory Part that was submitted as part of that filing, and follows immediately after the cover letter, Universal deleted the pollution exclusion to a limited extent, did they not?

A Yes.

Q All right. And you can tell by looking at the Vermont State Amendatory Part, which is the three-page document, that the exclusions pertaining to – the exclusions pertaining to pollution and contamination are

deleted with respect to an auto insured by the policy and garaged in or used for garage operations in Vermont; is that right?

A Yes, I see that.

Q And then it goes on the next page to indicate which of those exclusions are deleted, and those are M and N with respect to the garage insurance?

A Yes.

Q G, basic auto; and G and H in the umbrella coverage?

A Yes.

Q There's no deletion of the exclusions in the general liability policy is there?

A There's no mention at all.

Q Okay. Does it say somewhere in your rules and regulations that a transmittal or covering letter must set forth the exact policy provisions that are being presented for your consideration?

[p. 156] A When this filing was made, we didn't have a regulation.

Q So there was no requirement at that point about what the transmittal –

A There was no requirement, no rule that spelled out the requirements.

Q And 81-3, as in effect now, or sometime subsequent to this filing, did make some requirements or include some requirements for the transmittal letter, did it not?

A Yes.

Q And even under 81-3, is there a requirement that the transmittal letter described in detail the coverages or exclusions that are under consideration?

A I'd have to refer to it. There is some mention of it in the regulation.

Q Do you have 81-3 with you? I think it's Plaintiff's Exhibit 50.

A Yes, I have it.

Q And I'm looking at section six under "general requirements," subsection B. And does that subsection indicate that the filing transmittal letter shall contain a descriptive caption?

A Yes.

Q And the caption shall briefly identify the line of insurance and so on?

A Yes.

[p. 157] Q There's no – I'm sorry. Go on to the rest of subsection B on the next page. The final sentence of it indicates that in order to expedite the filing process and to reduce correspondence, the filing should be reasonably documented and self-explanatory; is that correct?

A Yes.

Q And then it gives as an example, if expense ratios are in a filing, an explanation as to how the ratios were obtained must be provided?

A Yes.

Q And then in subsection E, it indicates that the – when an insurer or other filer submits a rule or form, the transmittal letter thereof shall state how the rule policy or form will be used; is that correct?

A Yes.

Q Is there anything else in this regulation 81-3 that indicates that a transmittal letter is required to provide in precise detail the coverages and/or exclusions thereto?

A I haven't really seen this regulation for a number of years until yesterday, so it would take me some time really to – to review it to answer that question. I believe there are other provisions of it that do apply to the filing. It's difficult for me to answer right now without reviewing the regulation.

Q In any event, if there were any more specific requirements [p. 158] as to what was to be contained in a transmittal letter, the place to find it would be in 81-3?

A Yes.

Q There isn't any other rule or regulation that you are aware of that details what needs to be in the transmittal letter?

A No.

Q When an insurer – I'm sorry, when an ISO filing is made, and then ISO files changes to that filing, changes to that form that they have previously filed, does that ISO change affect forms which have previously been filed on an independent basis by other insurers or by insureds?

A No.

Q No?

A No.

Q Does the disapproval of a specific form have any effect on the earlier approval of a different form?

THE COURT: You're losing me.

Q Well, does your – the approval or disapproval of a particular form apply only to the form that you stamp the approval on or disapproval on?

A Yes.

Q So when an insurer submits a form to you, and you stamp "disapproved" on it, does that have any bearing or effect on forms which you have previously approved?

[p. 159] A If the forms we have previously approved were different, it has no effect. If we're not – if we're talking about two different forms, I think we are here, it would have no effect. If we're talking about, in effect, the same form, then it's going to apply to all forms of the type in the – referenced in the disapproval.

Q Assume that insurance company A submits a form for your approval, and perhaps it relates to uninsured motorist coverage, and you stamp your approval on that form, this is an acceptable policy to use, and then assume that insurer B comes in and has a form which also relates to uninsured motorist coverage but is not identical to the form submitted by insurer A, and you for one reason or another disapprove insurer B's filing, you stamp disapproved on it and you send it back to them for further work. You with me?

A Yes.

Q Okay. Does that disapproval of insurer B's form have any effect on insurer A's earlier filed approved form?

A No.

Q If something is objectionable in a filing which you receive, do you disapprove the entire filing?

A Normally, yes.

Q You usually send back the whole thing?

A We send a letter to the company communicating our concerns.

[p. 160] Q All right. "We can't approve this filing until you straighten out this problem or that problem"?

A That's a fair representation.

Q Have you had an opportunity to go through the filings under the Unicover III program that were made by Universal between May of 1980 and, say, 1986 or '87?

A Yes.

Q You have been through all of those?

A I believe I have.

Q And have you – those were produced primarily by Universal, were they?

A Yes.

Q They weren't – some of them weren't available in your department or you couldn't find them?

A Yes.

Q Have you had an opportunity to look at the various approvals and disapprovals that are noted on them?

A Yes.

Q Do you have any reason to question that in fact the approvals or disapprovals noted on them were those of your department?

A I have no reason to believe that they weren't.

Q So that the stamps that appear on them appear to be the stamps that came out of your office?

A They appear to be.

[p. 161] Q I may have asked you this in another context, but is it true that even today you allow Universal to exclude pollution coverage on all retail gasoline sales where there are underground storage tanks if Universal complies with certain procedural requirements in obtaining the insured's signature and filing that with the department?

A If they make an individual risk filing, we would approve it. There are – okay.

Q Am I correct that you have approved for Universal's use with its Unicover III policy a form of pollution exclusion which has a place for the insured's signature?

A Yes.

Q All right. And you have agreed with Universal that if they satisfy themselves that there is a pollution risk, which in these cases is ordinarily underground storage tanks, and they obtain the insured's signature, and

mail that to your department to be kept on file, that they may issue the policy in that form with those exclusions?

A Yes.

Q When was the ISO business owner's policy amended to provide for deletion of the pollution exclusions?

A I couldn't tell you without looking at some document.

Q Was it sometime after the filing which was previously marked or admitted as Plaintiff's 9 which pertain to the ISO general liability policy?

[p. 162] A Yes, it was.

Q I show you what's been marked and I guess admitted as Defendant's FF for identification and ask you whether that appears to be an ISO circular pertaining to the pollution exclusions with respect to the ISO business owner's policy?

A Yes.

Q Now, does the ISO business owner's policy contain some general liability provisions?

A Yes.

Q And apparently looking at this ISO circular, it seems that ISO did not file a pollution exclusion deletion form until sometime in April or May of 1985; is that correct?

A Yes.

Q So prior to that time, presumably the ISO business owner's policy did not have this deletion of the pollution exclusion attached to it; is that fair to say?

A Yes.

Q So in – then apparently in 1984 and '85, there were forms of general liability – forms of insurance policies which included general liability coverage which did not have the pollution exclusion deleted and which had been approved by your department; is that correct?

A The forms had been previously approved and remain in effect.

Q They remain in effect because you hadn't notified ISO of [p. 163] withdrawal of approval?

A That's correct.

Q You mentioned earlier the Unfair Insurance Trade Practices Act in connection with the approval or disapproval of insurance policy forms. And I wonder when you first thought of this idea that that statute had some bearing on the approval or disapproval of policy forms?

A When did I think about that? That your question?

Q Yes.

A I can't tell you.

Q In any event, apparently by March of 1990, you hadn't thought of that as one of the reasons that you approved or disapproved pollution exclusions; is that correct?

A My answer was that we were never faced with a hearing situation where we had to legally document our

reasons for doing something or not doing something. Now, I was just – I think I said before, I was carrying out the policy that was the – the department had.

Q Apparently it has been determined by your department that it does not constitute an unfair trade practice to exclude pollution coverage altogether in certain high risk situations so long as the insured signs off on the form; is that correct?

A Correct.

Q And it has also been determined that it's not an unfair insurance practice to exclude pollution coverage in a garage [p. 164] liability policy; is that correct? The forms we have been talking about are general liability policies, are they not?

A Yes, they are.

Q Do you have any similar rule pertaining to garage liability policies?

A Yes, there would be a similar rule pertaining to garage liability.

Q Where is that rule set out?

A This is – well, I have used the wrong term when I said rule. Rule usually refers to rule-making procedure and I shouldn't use that term. Policies is the more correct term. The policy the department had to resist or not – not – to disapprove pollution exclusions applied to garage liability and it applied to general liability, business owners. It applied to liability in general, wherever it was found.

Q But not all at the same date, did it? I mean apparently business owners, as far as ISO policy was concerned, wasn't effective until sometime around June 1985?

A It was effective then because it was an error.

Q It was an error?

A Yes.

Q Are you aware that the Vermont legislature has dealt with the issue of available insurance coverage and pollution damages or environmental cleanup costs and other legislation?

A Yes.

[p. 165] Q Are you familiar with the Superfund legislation?

A No, I'm not familiar with that. I have heard about it.

Q And are you familiar with the fact that the Vermont legislature has provided for funds for environmental cleanup up to the amount of a million dollars if insurance coverage is not – a million dollars with respect to any one spill, if insurance coverage is not available?

A That's my general understanding. I'm not familiar with that statute, but that's my understanding that there is something like that out there.

Q So you do have some knowledge that the legislature has dealt with the issue of available insurance coverage as it relates to environmental cleanup or pollution accidents?

A I'm not really qualified to answer that.

Q When you sat down and negotiated with ISO over this endorsement – I don't remember the number. The one that pertains to deletion of a pollution exclusions [sic]?

A Plaintiff's Exhibit 9.

Q Plaintiff's 9, yes. But it must have an ISO number, but I can't –

A GL0154.

Q That's not referenced on the cover page, cover letter of Exhibit 9, is it?

A No, it's not. This is a draft, and the number's not on there.

[p. 166] Q I'm sorry, what –

A This is a – a draft of the endorsement, and the endorsement form number does not appear on the draft.

Q I see. When you – all right. Referring to the endorsement that is contained within Plaintiff's Exhibit 9, did you – did ISO negotiate any changes to the Unicover III policy?

A They did not mention Unicover III by name.

* * *

[p. 168] Q I'm not sure that the background of what happened with the pollution exclusion with respect to the ISO policy was entirely made clear, and I wonder if we could go over that a little bit.

[p. 169] Am I correct that ISO, with its general liability policy, at your request or direction, deleted generally the pollution exclusions from sometime in the '70s until January 1st, 1983?

A I wasn't working for the Vermont Department in the early '70s but it's my understanding that it was the department's policy.

Q And then in approximately January of 1983, the department permitted ISO to exclude from its general liability policy pollution coverage on this representation that a separate policy would be made available to provide pollution coverage?

A That's correct.

Q All right. And then sometime in approximately October of 1983, the department began to understand that such independent separate policy was not widely available to consumers in Vermont and was not being provided, and you then did what, notified ISO that you intended to withdraw your approval of the pollution exclusion?

A We simply contacted them and indicated our concern, and said we intended to withdraw approval of their policy form. But what we would have had to have done is with – what we would have had to have done was to withdraw our approval of their general liability policy form.

Q So you indicated to ISO then sometime in 1983 that you intended to withdraw your approval of their general liability policy which excluded coverage for pollution damages?

[p. 170] A Yes.

Q And then in response to that, you had some meetings with ISO and then you came up with this compromise and ISO said, "All right, we will once again delete it from our policy"?

A Yes.

Q Was Universal authorized – had Universal authorized ISO to make filings on its behalf prior to the filing that's already in evidence? I think that's Plaintiff's 6. That's the ISO authorization form.

A Yes.

THE COURT: I'm sorry, I missed that question.

MS. McANDREW: I think you can afford to miss it because I already asked it before.

THE COURT: You did?

MS. McANDREW: I did. I asked whether Universal had submitted these ISO authorization forms in years prior to the one that's been admitted into evidence for 1982.

THE WITNESS: The answer's yes.

Q Do you mean to suggest that, in looking at that form, that ISO could not, once it filed that authorization form, could not file an independent policy form on its own behalf?

A You're using the form ISO. I think you want to refer to Universal Underwriters.

Q I'm sorry. Do you mean to suggest that after filing the ISO authorization, that Universal would be

prohibited from [p. 171] filing a separate form on its own behalf?

A It would not.

Q And in fact, over the years, when it had these authorization – ISO authorization forms on file with the department, it continued to file its Unicover program and certain amendments thereto, even though it had this form on file

A Yes.

Q And you never rejected one of Universal's forms because it had authorized ISO to act on its behalf, did you?

A That's true.

Q You went ahead and stamped your approval or disapproval depending upon the merits of the form that was being filed?

A That's correct.

Q Are there instances in which your department sends notice to a carrier or a group of carriers that you intend to take a particular position with respect to insurance policies?

A Yes.

Q And have you done that recently, for example with respect to title insurance and claims of the Abnaki Indians?

A Yes.

Q And what did you do, you sent around a letter to each insurer who was in the business of – who is authorized to write that kind of business in Vermont?

A Yes.

[p. 172] Q Did you write any such letter in connection with your policies pertaining to pollution exclusions?

A Not that I am aware of.

Q Did you do it either before this period in 1983 that we have talked about or after that period? At any time did you do it?

A I'm not aware of any letter that dealt with the pollution exclusion.

* * *

[p. 174] Q Looking again at 81-3, I have asked you to look at – specifically at section eight. You got section eight in front of you?

A Yes.

Q Does that section relate to what is referred to there as exception filings?

A Yes.

Q And does it indicate that an insurer who has authorized a rating organization to submit a policy form on its behalf may submit exceptions to that filing authorization for departmental consideration in connection with any insurance program, rule, rates, policy, form and/or line of insurance or combination of those, and then does it indicate that the insurer may not use the insurance program, rule, rates, policy or form which was filed by

the rating organization in its behalf on and after the effective date of its exception [p. 175] filing?

A Yes.

Q And consequently, all subsequent revisions to the excepted rule and rates and so on which are submitted by the rating organization will not apply on behalf of such an insurer? Is that what 81-3 indicates?

A It depends on the authorization at the time. If the authorization hasn't changed.

Q Well, does section eight say anything about the authorization other than if an insurer has filed such an authorization?

A The authorization is, at the time the filing is made, going to govern. The authorization is going to govern.

Q Doesn't section eight say that an insurer who has authorized a rating organization to submit forms on its behalf may nevertheless submit exception filings?

A That's true.

Q And it doesn't say anything about filing any form permitting them to file exception filings, does it?

A No, it doesn't say they can't change the authorization. It doesn't say they can't go back. They can go back and – they can go back and use the Insurance Service Office forms just as filed if they wished at any time. So that they could have an exception one year and the next year use ISO forms as long as they file that letter with us and said, [p. 176] "We're now members of the Insurance Service Office and we're gonna use those forms."

Q That authorizes them to use their forms, use ISO forms?

A That's correct.

Q Does it require them to use ISO forms as opposed to some other form that they may submit and have you stamp your approval on?

A It depends how that letter – how the authorization is completed. If the authorization is completed and says they have authorization to file rules, rates and forms with the exception, of course the exception's not included within the authorization. Lacking a specific exception, it applies to all rules, rates and forms.

Q Lacking a specific exception, they would – a company filing or a company who is a member of ISO would be permitted to use ISO forms?

A Yes.

Q All right. Would they be required to use ISO forms or could they submit some separate forms?

A They would be required to use ISO forms.

Q Unless they submitted a separate –

A Unless subsequent to that they submitted some separate forms, different forms.

Q Mr. Prindiville, I show you what was previously marked and admitted as Defendant's P and ask you whether you can identify [p. 177] that as the filing that was made by Universal originally on September 15th, '83,

the filing made at your department. And it may be confusing because the original filing is at the back of it, but I think it's page 0620.

Do you have in front of you the original filing dated September 15th, 1983?

A Yes.

Q And does that indicate in the caption that it relates to the Unicover III program?

A Yes.

Q All right. And it also says that it refers to the Vermont State Amendatory Part?

A Yes.

Q And does Universal indicate in that cover letter to the department that it's submitting in captioned forms – "the changes are to comply with" a certain section of the Vermont Statutes and also with the changed ISO form CA0232?

A Yes.

Q And was that filing declined by the department on September 23rd, 1983?

A Yes.

Q And so even though it was an ISO form, but included the language from an ISO form, it was disapproved by your department, was it not, for use with the Universal policy?

A It was disapproved for technical reasons.

[p. 178] Q But it was nonetheless disapproved by your department?

A Correct.

Q And until Universal complied with your technical requirements, Universal was not authorized to use that form with its Unicover III policy, was it?

A That's correct.

MS. McANDREW: May I have just a moment, your Honor?

THE COURT: Surely.

Q To your knowledge, did your department ever launch any or begin any investigation – strike that. Maybe that's not the way I want to ask the question. Was Universal ever investigated or fined for engaging in unfair insurance trade practices with respect to any of the issues we have been talking about?

A Not that I know of.

* * *

[p. 108] Q They could have, but apparently they didn't. But on the front page of the authorization that you just read us that any filing that they file that's inconsistent with an ISO filing is superseded by the new filing? I mean supersedes the ISO filing?

A The inconsistency would have to happen in the future, not in the past.

Q Right, and they had one of these forms on file with you at the time they filed the Unicover III policy in 1980, did they not?

A Yes, they did. Now –

Q And –

A I would say –

MR. MANCHESTER: You can finish the answer.

A The 1980 filing of Unicover III would have amended, in effect, the prior authorization of the Insurance Service Office.

Q Right. And that filing was a separate and independent filing from the ISO comprehensive general liability form, is it not?

A Yes.

* * *

No. 91-1581

Supreme Court, U.S.
FILED
MAY 13 1992
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

UNIVERSAL UNDERWRITERS INSURANCE COMPANY,
Petitioner,

v.

GERRISH CORPORATION, doing business as
Gerrish Motors, doing business
as Scrub-a-Dub,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether, under Vermont law, petitioner is bound by modifications to an insurance policy that have been filed with the Vermont Department of Banking and Insurance by petitioner's authorized agent.

2. Whether, under Vermont law, the costs incurred in cleaning up pollution are considered "damages" for purposes of determining coverage under an insurance policy.

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BRIEF FOR RESPONDENT IN OPPOSITION

STATEMENT

This case involves a dispute over the scope of protection afforded by an insurance policy issued by petitioner to respondent. Applying Vermont law, the district court held that respondent was entitled to coverage for costs associated with gasoline leakage, and the court of appeals affirmed.

1. *The Insurance Dispute.* The controversy at issue here arose out of the leakage of gasoline from underground storage tanks located at a car wash and gasoline station owned by respondent. In 1985 the Vermont Agency of Environmental Conservation notified respondent that the gasoline—which had spilled more than a dec-

ade before—was causing environmental damage to nearby property and to the Ottauquechee River.[1] Pet. App. 4-5, 23-24. The agency then proposed to respondent alternative courses of action: either conduct a cleanup itself or else reimburse the State for the cost of a state-directed cleanup. Pet. App. 5, 24.

Faced with this potential liability, respondent sought to claim indemnification under its Unicover III insurance policy with petitioner. That effort proved unsuccessful. Petitioner took the position that it had no obligation under the policy for liability of this type. Pet. App. 8, 25. In doing so, it relied on various exclusions contained in the Unicover III policy, including exclusions for "INJURY caused by the dumping, discharge, or escape of irritants, pollutants or contaminants" and for "INJURY caused by the discharge, release, or escape of any petroleum substance into or upon any body of water or water course . . . ." Pet. App. 5-6, 26-28.[2]

The Unicover III policy, with the exclusion for pollution damage, had previously been filed by respondent and approved by the Vermont Department of Banking and Insurance (VDBI) in 1980. In 1982, however, petitioner had given authorization to the Insurance Services Office (ISO) to act on its behalf before the VDBI. Pet. App. 7, 29.[3] The authorization specifically provided that VDBI

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[1] The court of appeals noted that "[p]rior to its discussions with Vermont, [respondent] was unaware of the existence of any underground contamination [from the car wash and gas station]." Pet. App. 5.

[2] Petitioner also asserted that, although it was obligated to pay "damages" incurred by respondent, the potential costs of a clean-up were not damages. Pet. App. 15, 39.

[3] Although the courts below referred to ISO as the "Insurance Services Organization," the authorization was, in fact, given to the Insurance Services Office, and we will use that name here. The court of appeals described ISO as "an insurance rating organization comprised of insurance companies." Pet. App. 7. It noted: "ISO provides various services for its members, including the drafting

might accept filings by ISO relating to, among other things, "Rules and Rates" and "Policy Forms and Endorsements." Pet. App. 29. In April, 1984, responding to VDBI concerns about exclusions for pollution, ISO filed a "Vermont Pollution Liability Exception Endorsement," which deleted so-called "pollution exclusions" from insurance policies written in Vermont.[4] Pet. App. 7, 31. The ISO filing stated that "these changes are applicable to all policies written on or after July 1, 1984." Pet. App. 32.

The endorsement filed by ISO was approved by VDBI in May 1984. Pet. App. 32. The following month, ISO notified its members (including petitioner) of the endorsement and its effective date, advising that the endorsement "must be attached to all policies providing general liability coverage in Vermont unless the coverage is specifically excluded." Pet. App. 7, 32. Three months later, while the endorsement was still in effect, petitioner issued to respondent the policy that forms the basis for this lawsuit. Pet. App. 8.

2. *The Lawsuit.* The lawsuit basically involved two questions with respect to the scope of coverage provided by petitioner: first, whether the Unicover III policy in its basic form provided coverage and, second, whether, if it did not, it had been amended by the endorsement filed by ISO. The district court ruled for petitioner on the first question, but for respondent on the second. It thus held that respondent was entitled to claim coverage under the policy.

The district court began by noting that, at the time of the filing of the endorsement, "ISO was authorized to act as [petitioner's] agent by the October 1, 1982 filing with VDBI." Pet. App. 43. It then concluded that the endorse-

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and filing of insurance forms with various state insurance departments." *Id.*

[4] At the same time ISO filed two Pollution Exclusion Endorsements, which could be used to exclude coverage for pollution under certain circumstances. Pet. App. 31.

ment applied not just to ISO forms but to the Unicover III policy as well, pointing out that petitioner had neither limited the initial authorization to ISO to file on its behalf nor, after the endorsement had been filed, notified VDBI that it did not intend to be bound by it. Rejecting an argument that the endorsement filed by ISO did not fit the general structure of the Unicover III policy, the court observed that the filing had been "by [petitioner's] agent" and that petitioner "is bound by the acts of its express agent done in furtherance of the agency." Pet. App. 47, 48.

The district court, for much the same reasons, dismissed an argument by petitioner that it could not be held responsible because it did not have knowledge of the VDBI policy against pollution exclusions—the policy that led to the filing of the endorsement by ISO. Again, the court stated that "[f]or purposes of dealing with VDBI, ISO had an agency relationship with [petitioner]," Pet. App. 49, and it found that, even absent actual knowledge, petitioner thus would be "charged with constructive knowledge of the information, which was known to ISO." *Id.* Moreover, the court found that petitioner was fully aware of the action taken by ISO to address the issue of pollution coverage. (The court relied, in part, on contemporaneous statements by a Vice-President of petitioner, which took the position that "these [ISO] endorsements are MANDATORY. . . . [W]e can't delete them or charge for the coverage without the insured's permission." Pet. App. 50.) Given that petitioner knew of the actions of its agent, and given that petitioner did nothing to disavow them, the court held that the filings by ISO "became a part of all Universal policies issued in Vermont" during the period relevant to the lawsuit. Pet. App. 50.[5]

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[5] The court also rejected a claim by petitioner that, in requiring deletion of pollution exclusions, VDBI was acting outside of its authority. The court noted that ISO had entered into voluntary negotiations with VDBI and that petitioner was "bound by ISO's actions on its behalf." Pet. App. 52.

The district court also found against petitioner on another point: whether clean-up costs or "response" costs are "damages" covered by the policy. The court noted that other courts had come out different ways on this general question and found no Vermont cases directly on point. However, looking at a Second Circuit case applying New York law, as well as general principles of Vermont law, the court stated: "[T]his Court believes that the Vermont Supreme Court would find that pollution clean-up costs are damages under the policy in this case, and we so hold." Pet. App. 40. *See Avondale Indus. Inc. v. Travelers Indem. Co.*, 887 F.2d 1200 (2d Cir. 1989), *cert. denied*, 496 U.S. 906 (1990).

The court of appeals affirmed. Like the district court, it concluded that the Unicover III policy—prior to modification—did not cover the claim for which respondent had sought protection. Pet. App. 10. But the court of appeals also agreed with the district court "that the policy was amended by [petitioner's] agent, ISO, to provide coverage for this claim." Pet. App. 10-11.

The court of appeals stated that the basis for its holding was "rooted in the law of agency." Pet. App. 11. After reviewing Vermont law on the creation of principal-agent relationships, the court stated that "[i]n the instant case ISO clearly acted on behalf of [petitioner] with [petitioner's] knowledge and with the authority conferred by [petitioner]. In sum, ISO was [petitioner's] agent and was empowered to bind [petitioner]." Pet. App. 12. Although petitioner again argued that the actions by ISO did not affect its Unicover III policy with respondent, the court, applying "general rules of contract and insurance law," disagreed. It held that "[t]he pollution endorsement filed by ISO affected all policies issued after July 7, 1984, including the Gerrish policy." Pet. App. 13.

The court of appeals further held that clean-up or response costs were "damages" covered by the policy. Al-

though it noted that there were "no cases interpreting Vermont law" on this exact point, Pet. App. 16, it found "some guidance" in Vermont law providing that "policies are to be interpreted in favor of complete coverage." *Id.* It went on to observe that "[i]n this instance, construing the term 'damages' in favor of [respondent] results in coverage under the policy," Pet. App. 17, and thus concluded that petitioner was responsible for the indicated coverage. The court of appeals stated its belief "that the Vermont courts would reach the same conclusion." *Id.* (citing *Bean v. Sears, Roebuck & Co.*, 129 Vt. 278, 282, 276 A.2d 613, 616 (1971)).

ARGUMENT

This case does not, as petitioner would have it, involve a dispute over the proper extent of due process rights to be afforded to petitioner; rather, it involves nothing more than a dispute over application of the Vermont law of agency. In deciding that petitioner was responsible for particular coverage under its insurance policy with respondent, the courts below both concluded that ISO had acted as the agent for petitioner in making certain filings with VDBI and that petitioner had knowledge of, and was bound by, those filings. As a result, the courts found no basis for petitioner to evade responsibility for coverage on the theory that VDBI had imposed changes unilaterally and without notice. Those determinations—a mix of factual findings and interpretations of state law—do not merit further review.

I. THE COURTS BELOW PROPERLY CONCLUDED THAT, UNDER VERMONT LAW, PETITIONER WAS BOUND BY THE ACTS OF ITS AGENT

The gist of the complaint now made by petitioner is that VDBI modified the terms of its Unicover III insurance policy without affording petitioner the notice and hearing required by due process. Pet. 18-27. But this argument was rejected by the courts below, not because

they concluded that VDBI was under no legal obligation to provide due process, but because they determined that ISO, the agent for petitioner, had actually agreed to the modifications. In the final analysis, it is *that* holding to which petitioner objects and towards which much of its petition, directly and indirectly, is addressed. *See* Pet. 5-10, 13-15, 22-23, 24-25.

There is no reason whatever to review that holding. First of all, it is simply a matter of Vermont law applied to the particular facts of this case. In holding petitioner responsible under its policy with respondent, the courts below decided that ISO was acting as an agent for petitioner in filing the 1984 endorsements deleting pollution exclusions from Vermont policies and that the endorsements applied to Unicover III policies as well as policies issued on ISO forms. These decisions raise no issues of federal law, and, once they are accepted, the due process claims asserted by petitioner effectively fall by the wayside.

The holdings below are also correct. For all petitioner's efforts to claim otherwise, the plain fact is that petitioner gave ISO extremely broad authorization to make filings with VDBI on its behalf. In dealing with VDBI concerns about pollution exclusions, ISO undertook to file endorsements deleting such exclusions unless they were the subject of separate bargaining between insurer and insured. Notified of that action, petitioner gave no indication to VDBI that it considered the endorsements inapplicable to its Unicover III policies, nor did it otherwise disassociate itself from the acts of its agent.[6] The courts below thus properly concluded that, under Vermont law, the endorse-

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[6] Beginning in April 1985, petitioner did file proposed endorsements with VDBI that directly addressed the issue of pollution exclusions. *See* Pet. App. 33-35. At the time of the issuance of the policy in this case, however, petitioner had neither filed its own endorsements nor indicated any inclination not to be bound by those filed by ISO.

ments modified the terms of coverage under the Unicover III policy.

Given these circumstances, the cases cited by petitioner (Pet. 18) are wholly beside the point. In none of the due process cases relied on—cases such as *Hannah v. Larche*, 363 U.S. 420 (1960), *Texaco, Inc. v. Short*, 454 U.S. 516 (1982), and *Goldberg v. Kelley*, 397 U.S. 254 (1970)—had the state had any dealings with, much less reached agreement with, an agent of the person deprived of property. To the contrary, the basis of the constitutional claim in each case was that the State had acted without giving the property owner *any* right to be heard, either directly or through a representative. That is a very different matter from the sort of claim made here: that petitioner is dissatisfied with the actions taken by its agent and now wishes to disavow them.[7]

Nor can petitioner, relying on *Bouie v. Columbia*, 378 U.S. 347 (1964), turn this into a due process case by suggesting that the decision below represents some extraordinary departure from preexisting Vermont law. Even assuming that *Bouie* applies outside the particular context of *ex post facto* laws—one in which lawful conduct is made criminal after the fact—there was no retroactive change of law here. As petitioner appears to recognize (Pet. 18-27), Vermont law provides, and at all relevant times has provided, for notice and an opportunity to be heard before approval of insurance contracts is withdrawn. But nothing in Vermont law, and certainly nothing in the due process clause, bars the State from nego-

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[7] The analogy offered by petitioner (Pet. 22) readily points up this difference. It is, of course, true that notice to one householder about his building plans will not necessarily affect the building plans of his neighbors, for the obvious reason that there is no legal relationship between the neighbors. But, if the first householder is authorized to act as agent for all the neighbors, and does so act on their behalf, then the neighbors are properly deemed to have notice of, and be bound by, his actions.

tiating changes in approved contracts with an agent for the insurance carrier. That is all that happened here.

II. THE COURTS BELOW CORRECTLY HELD THAT CLEAN-UP COSTS ARE DAMAGES UNDER VERMONT LAW

The second issue presented by petitioner—whether clean-up costs are "damages" under the policy issued by petitioner—is solely a matter of state law. The courts below each made clear that, in addressing this question, they were attempting to apply Vermont law as the Vermont courts would do. *See* Pet. App. 17, 40. There is no need for this Court to second-guess their conclusion that, under Vermont law, coverage does exist.

Petitioner is correct that federal courts have found themselves divided over the proper answer to this recurring question. See Pet. 28-29 and notes 11-13. But that division does not make the case appropriate for review. The variety of results among the federal courts arises, not from disagreement over interpretation of a point of federal law, but from the application of different state laws tending in different directions. Far from being a condition that calls for correction by this Court—presumably by a single rule to be imposed on all 50 states—this lack of uniformity is simply a natural consequence of our federal system. Under the law of Vermont, clean-up costs are "damages" for purposes of defining insurance coverage, and petitioner has no grounds for complaint that the law of other states may be different.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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(4)

No. 91-1581

In The

Supreme Court of the United States

October Term, 1991

UNIVERSAL UNDERWRITERS INSURANCE COMPANY,

Petitioner,

vs.

GERRISH CORPORATION, doing business as Gerrish Motors, doing business as Scrub-a-Dub,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Respondents' Brief in Opposition to the Petition for *Certiorari* begs the very question raised, by simply assuming that Vermont agency and insurance law must be what the Second Circuit said it was. Having made that assumption, Respondent then employs it as a bootstrap to argue that there is in this case no due process issue, but only one of Vermont agency law. Respondent, like the Second Circuit, avoids all reference to the Vermont insurance regulatory statutes which specifically govern the policy in question, and with which the Petitioner fully complied in having its form of insurance policy pre-approved by the Vermont Department of Banking and Insurance ("VDBI"), because the statutes mandate the due process protections urged by the Petitioner.

The Vermont insurance statutes are form-specific rather than filer-specific; that is, the statutes provide for the filing and approval (and withdrawal of approval) of insurance policies on a form-by-form basis. 8 V.S.A. §§ 3541, 3542. The statutes do not, as Respondent would have it, license an insurance company or rating organization as an authorized filer, and then permit generalized notice to that filer to take the place of notice directed to a particular form. As 8 V.S.A. § 3541(b) and (c) dictate, VDBI had always, prior to the district court's opinion in this case, directed its notices of approval, disapproval, or withdrawal of approval to the particular form under consideration. Whether VDBI gave notice to an insurer or to the Insurance Services Office ("ISO"), acting as agent for a number of insurers, notice was directed to the particular form affected.[1]

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[1] VDBI could presumably have chosen to act through generalized rule-making, but elected not to. If VDBI had chosen to

(Continued on following page)

Contrary to the suggestion made by Respondent that Universal first filed an ISO Authorization Form in October of 1982, the evidence in the case (about which there was no dispute) established that Universal had had an ISO authorization form on file with VDBI for a number of years prior to 1982, and had such an authorization on file at the time the Unicover III policy form was first filed in 1980. Knowing Universal had an ISO authorization on file, VDBI nevertheless had, historically and without exception, treated Universal's Unicover III policy form as a filing separate and distinct from any filings made by ISO. That fact was nowhere made clearer than through the testimony that, during the years 1978-83, when VDBI refused to approve a pollution exclusion for use in ISO's form of general liability policy, it approved the pollution exclusions in the Unicover III policy (because of the nature of the increased risks insured under the latter policy). The Department's conduct in treating the Unicover III policy form as distinct from ISO's general liability policy form is in accordance with the mandate of the last sentence of 8 V.S.A. § 3541(a), which says that authorization of a rating organization shall not preclude an insurer from continuing to act in its own behalf.

(Continued from previous page)

act through adoption of a rule, Universal as a member of the affected public would at least have had an opportunity to challenge the authority of VDBI, under 8 V.S.A. § 3542, to dictate the substantive provisions of a form of liability insurance policy. As it stands, Universal has never had the chance to raise the issue of the agency's subject matter jurisdiction over pollution exclusion clauses.

Both the district court and the Second Circuit, in their zeal to find coverage where admittedly none existed in the policy issued to Gerrish, hold that Universal's authorization of ISO to file ISO forms on Universal's behalf made ISO Universal's agent for every purpose, including amendment of the Unicover III policy, which ISO neither filed nor serviced on Universal's behalf. The courts' order thereby holds that once an agent is authorized to act in some transactions for its principal, all of the principal's other transactions thereafter conducted in its own behalf directly with third parties are subject to alteration by actions which the agent may take in some unrelated transaction, whether or not known to the third party or intended by the principal. It is that far-fetched interpretation of Vermont agency law – supported by no citation to statute or case law – that deprives petitioner of the due process protections which the legislature saw fit to incorporate in the insurance regulatory statutes.[2]

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[2] The lower courts' allusion to agency law is misplaced in the first instance since the "apparent authority" principle relied upon comes into play only where a third party relies to its detriment on the mistaken belief that an agent is authorized to act in the matter on a principal's behalf. Gerrish, the third party here, never knew about the 1984 amendment made to ISO's general liability policy. If VDBI had standing as a third party to raise the issue, it could not claim to have relied on actions of ISO to bind Universal in this instance, since the Department had always dealt directly with the principal, Universal, on every question pertaining to the Unicover III policy form, both before and after ISO filed an amended pollution endorsement to its policy form. In short, VDBI never communicated through or dealt with ISO with respect to the Unicover III form. ISO filed a variety of endorsements and changes to its many policy forms during the years 1978-84, and VDBI never considered or held any of them, including the endorsement at issue, applicable to the Unicover III policy.

Where the statute requires form-specific notice, where the Department had always given form-specific notice in the past, and where Universal had been given by VDBI to understand that its Unicover III policy form was independent of any form filed by ISO, judicial interpretation holding that notice to ISO about an ISO-filed policy form constitutes notice to Universal about its independently-filed form deprives Universal of the straightforward, form-specific due process protections afforded by Vermont's regulatory statutes. The departmental notice given to ISO, which Respondent now argues satisfied VDBI's obligations to Universal, was notice to ISO that VDBI intended to withdraw approval of a January, 1983 ISO insurance program which permitted the pollution coverage to be provided in a separate policy offered in conjunction with the general liability form in use by ISO – a program which apparently had proven unsatisfactory. The Unicover III policy form was not a part of that ISO program, and was not affected by the January, 1983 changes to ISO's policy forms. There is no logical reason why Universal's Unicover III policy would be affected by the change to the ISO insurance program which ISO consented to in October, 1983 (two weeks before VDBI again approved that portion of the Unicover III policy – the Vermont State Amendatory Part – referencing the pollution exclusions contained in the Unicover III form). The Unicover III policy, unlike ISO's, always contained the pollution exclusion which was included in Gerrish's policy, and had been approved for Universal's use that way since 1980 without interruption.

The Vermont legislature undoubtedly could have satisfied the need for statutory due process protections in

this field of regulatory intervention by adopting different notice and hearing provisions, including, for example, notice and hearing provisions directed to filers, not forms. But given the statutory scheme which Vermont did adopt, it should be incumbent on federal courts applying those statutes to afford those regulated thereunder the actual protections enacted by the Vermont legislature.

The Petition for *Certiorari* is not simply a complaint that the lower courts misconstrued Vermont law. The complaint is that, by active redefinition of the terms of an admittedly unambiguous insurance contract, without reference to the statutes which supposedly govern the legally permissible terms of that contract, the federal courts effected deprivation of the minimal due process protections which the Vermont legislature specifically mandated.

Respectfully submitted,

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June 1, 1992